HUNDRED AND SECOND REPORT
PUBLIC ACCOUNTS COMMITTEE
(1994-95)

(TENTH LOK SABHA)

ASSESSMENT OF RELIGIOUS AND CHARITABLE TRUSTS

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

सत्यमेव जयते

Presented to Lok Sabha on 28.4.1995
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LOK SABHA SECRETARIAT
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CORRIGENDA TO 102ND REPORT OF PUBLIC ACCOUNTS COMMITTEE (TENTH LOK SABHA)

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COMPOSITION OF PUBLIC ACCOUNTS COMMITTEE (1994-95)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Hundred and Second Report on Paragraph 2.02 of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 1992, No. 5 of 1993, Union Government (Revenue Receipts—Direct Taxes) relating to System Appraisal — Assessment of Religious and Charitable Trusts.

2. The Report of the Comptroller and Auditor General of India for the year ended 31 March, 1992, No.5 of 1993, Union Government (Revenue Receipts — Direct Taxes) was laid on the Table of the House on 30.4.1993.

3. In this Report the Committee have found a number of inadequacies in the system of granting exemptions to income of religious and charitable trusts as well as deficiencies in the existing law and its applicability. The Committee's examination of the cases where the exemption have been allowed to religious and charitable trusts has revealed that various concessions are allowed to trusts in recognition to the contributions made by them towards social objectives. Surprisingly, no effort has been made to monitor whether the trusts have been fulfilling the objectives under which they have been established and also for ensuring that there is no abuse of the concessions which are enjoyed by such trusts. The Committee have also noted that no proper systematic evaluation study of the working of these institutions has been undertaken by the Ministry during the last ten years. In the absence of existence of any effective system evolved for scrutinising the functioning of a large number of trusts the Committee have not been able to appreciate the rationale for allowing exemptions to these trusts, more so when the amount of revenue involved in such exemption is substantial and when the primary object behind grant of such exemption is to enlarge the contributions made by these trusts in supplementing the work of the welfare state by catering to the educational, medical, socio-economic and religious needs of the people in the country. In the light of the deficiencies/shortcomings observed in this Report, the Committee have desired that the Ministry should seriously ponder and look into the whole issue afresh with a view to devising a procedure for proper and systematic evaluation of religious and charitable trusts so that those trusts which are not discharging their functions in consonance with the objectives under which they have been established do not escape any tax liability.

4. The Committee examined the Audit paragraph at their sitting held on 11.7.1994. The Committee considered and finalised the report at their

sitting held on 25.4.1995. Minutes of the sitting form Part-II* of the Report.

5. For facility of reference and convenience, the recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix-II of the Report.

6. The Committee would like to express their thanks to the Officers of the Ministry of Finance for the co-operation extended to them in giving information to the Committee.

7. The Committee place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

NEW DELHI;
25 April, 1995
5 Vaisakha, 1917 (Saka)

BHAGWAN SHANKAR RAWAT,
Chairman,
Public Accounts Committee.

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REPORT

ASSESSMENT OF RELIGIOUS AND CHARITABLE TRUSTS

I. Introductory

Religious and Charitable Trusts are a manifestation of the instinct of piety and benevolence of the human race. Almost every country recognise the need to encourage such philanthropy. This recognition has led to properties applied to religious and charitable purposes being excluded from the rule against perpetuity and exemption from Income Tax liabilities. In India also traditionally philanthropy has played a prominent role in supplementing the work of the Government of a 'Welfare State' by catering to the socio-economic, cultural, medical, educational and religious needs of the society. To encourage the contributions of such Trusts in catering to the needs of society, tax concessions have been granted to them under the Indian taxation system. Under the Income Tax Act, 1961 any income of trusts and institutions created for charitable or religious purposes, when derived from property held under trust or received through donation to the corpus of the trust, and applied for such charitable and religious purposes, is exempt from income tax subject to fulfilment of certain conditions. Wealth tax is also not charged on property held under trust or other legal obligations for public purposes of a religious and charitable nature. Donors are given relief from income tax and gift tax in respect of donations made to institutions established in India for charitable or religious purposes.

2. The provisions of the Income Tax Act which bear upon the assessment of religious and charitable trusts are contained in Section 2(15), 11 to 13, 80(G) and 139(4A) thereof. Sections 11 and 13 of the Act deal with exemptions available to the income held for charitable or religious purposes on fulfilment of certain conditions regarding application, setting apart and investment of such income.

3. Besides exemption under Section 11, the Central Government has statutorily and absolutely exempted under various sub sections of Section 10 some specific trusts, associations or institution as also certain types of income having regard to their objects and importance.

4. The Income Tax Act does not define a religious and charitable trust. However, the Indian Trust Act provides a definition to a 'trust'. The Income Tax Act gives an inclusive definition of the term 'charitable purpose' classifying it under four heads, *viz.*, relief for the poor, education, medical relief and the advancement of any other object of general public utility. As regards the reasons for not providing a definition of religious

trust in the Income Tax Act, the Committee were informed that the concept of religion is absolutely a matter of faith with individuals or communities and theerrfore it was difficult to define the religious purpose.

Audit Review

5. This Report is based on Paragraph 2.02 of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 1992, No. 5 of 1993, Union Government. (Revenue Receipts — Direct Taxes) relating to System Appraisal—Assessment of Religious and Charitable trusts (Appendix I). The Audit Review seeks to evaluate how far the provisions of Income Tax Act, Wealth Tax Act and Gift Tax Act have been applied correctly and whether there is any deficiency in the provisions of laws and their applicability which may be taken advantage of to avoid tax liability through the devices of trusts.

6. The review is based on a test check of the assessment records of 6133 public charitable and religious trusts conducted over assessment years 1986-87 to 1990-91, to examine the grant of registration for income tax purposes, the quantum and the manner in which income had been derived, applied, accumulated and invested *vis-a-vis* the provisions of Income Tax Act, 1961 and their liability to wealth tax and gift tax, if any. The Audit review revealed mistakes in assessment, involving tax effect of Rs. 11.46 crores in 232 cases.

II. Grant of Exemptions

7. The income of an institution, trust or a fund created for charitable or religious purposes can be exempted under Section 10 (23C) (iv) and (v) or Section 11 of Income Tax Act. Some of the conditionalities in the two are common; but while sub-section 4A of Section 139 prescribed mandatory filing of return if the total income of the assessee exempt under Section 11 is taxable without taking into account the provisions of that section section, filing of return in the case of assessees exempted under Section 10 (23C) (iv) and (v) would not be necessary since the income does not form part of the total income. It has pointed out by Audit that in such a situation the Department would have no opportunity to examine whether the conditionalities have been observed and whether the continuance of exemption is justified. The Committee desired to know the rationale in granting exemption under two different sections, *viz.*, 10(23C) (iv)&(v) and 11 of Income Tax Act, 1961 to Charitable and Religious Trusts. The Ministry of Finance (Department of Revenue) in a note stated:

> "The provisions of section 10(23C) (vi) and (v) cover (a) funds and institutions established for charitable purposes and whihe are of importance throughout India or throughout any State or States and (b) trusts or institutions wholly for public religious purposes or wholly for public religious and charitable purposes. The purpose of having a separate provision for such institutions was perhaps that these should not be subject to the requirement of filing annual returns of income

and there should be no time-limit for accumulation of funds in their case. To begin with, there was no prescribed investment pattern for the funds of these institutions but, it has been introduced with effect from 1.4.1989."

8. The Public Accounts Committee in their 144th Report (1982-83 7th L.S.) had expressed the view that the institutions granted exemption under section 10(23C) (iv) & (v) were free from all legislative, judicial and administrative control of Income Tax law. The Chairman, CBDT had admitted in evidence that this section should not exist on the statute book and all trusts should come under the discipline and control of Sections 11 & 13 of the Income Tax Act. The Committee were informed that the matter was under consideration of the Economic Administrative Reforms Commission (Jha Commission) and that a decision will be taken in the light of its recommendations. PAC had recommended that the question of deletion of section 10(23C) (iv) & (v) should be taken up without waiting for the final report of the Jha Commission. However, both the provisions continue to operate. On an enquiry of the Committee the recommendations of the Commission on the subject and the action taken thereon, the Ministry stated:—

(i) "The recommendation of the Economic Administrative Reforms Commission (E.A.R.C.) on the subject, was as under:—

'The C.B.D.T. or other authority granting approval for tax exemption purposes under various clauses of section 10 of the Income-tax Act should be empowered to revoke the approval where the circumstances so warrant.'

Elaborating the recommendation, para 36 of the report of the E.A.R.C. states that"... it is also not possible to avoid giving recognition to specified public purposes and the institutions set up for these purposes, through the various clauses of section 10. In fact, there may be advantage in having specific provisions for particular categories of institutions, as their claims for exemption would be carefully examined by the appropriate authorities before they are recognised..... for the present, at any rate, it seems necessary and desirable to retain both the sets of provisions" (*i.e.* both sections 10 and 11). "We will only add that the C.B.D.T. or other authority which grants approval to an institutions or fund for tax exemption purposes under one of the clauses of section 10, should be empowered to revoke the approval, either on the basis of a periodical review or otherwise when circumstances so warrant."

(ii) On the basis of the observations of the Public Accounts Committee and the aforesaid recommendation of the E.A.R.C. clauses (iv) and (v) of section 10 (23C) were amended by the Direct Tax Laws (Amendment) Act, 1989, with effect from 1st April, 1990, to provide that a notification issued by the Central Government specifying a trust or institution for the purposes of these clauses shall have effect for a maximum of three assessment years. An institution has thus to approach the .authorities periodically for renewal of exemption. The affairs of the institution are examined at different stages before granting renewal of exemption."

9. The Committee enquired how the fulfilment of conditions were ensured in cases where exemptions had been granted under Section 10 (23C) (iv) and Section 10 (23C) (v), from filing of return. In a note furnished to the Committee the Ministry stated that the approval for granting exemption from filing of income was accorded only after thorough examination at different levels of the applications made by any trust or institution for the purpose. The application contains information of total income of the relevant assessment year, amount utilised or accumulated for objects of the trust, details of investment and funds etc. and is accompanied by audited accounts.

10. When asked further whether such exemption was allowed only retrospectively and in case it was also granted prospectively, how the fulfilment of conditions was ensured in those years, the Ministry informed that the seventh proviso to Section 10 (23C) allowed the exemption to be granted retrospectively as well as prospectively.

11. The Committee wanted to know the remedies available to the Department to detect and prevent abuse of tax concessions in such cases. In a note furnished, the Ministry of Finance (Department of Revenue) stated that for exemption u/s 10 (23C)(v), the trust or institution should be for wholly public religious purposes or wholly for public religious and charitable purposes and its affairs should be administered or supervised in the manner so as to ensure that the income accrued is properly applied for objects.

12. According to the Ministry at the time of granting exemption u/s 10 (23C)(iv)/(v), the objects of the institution and conditions mentioned above are considered. The other requirements of law will operate after issue of notification. For this reason, the notification issued is conditional and not absolute. The Ministry of Law, in its opinion dated 21-10-1992 in the case of Exhibition Society, while examining the applicability of Sixth proviso in respect of business, observed that the said proviso will come into play only after an institution has been notified and that too to a limited extent of its business income. The same principle will be applicable with respect to other conditions specified in Section 10 (23C). However, as a matter of practice the applicability of all the conditions of Section is examined before granting of exemption. The conditional notification is issued to keep further check so that provisions of the Income Tax Act may be invoked if on a later date misuse of trust property comes to the notice of the department.

13. The Ministry also stated that at the time of renewal of the

notification the case is thoroughly examined at various stages to see whether the trust/institution is complying with the requirements of law.

14. The Income Tax Act provides a separate exemption under Section 10 (23A) for specified income of professional bodies engaged in the control, supervision, regulation or encouragement of professions of law, medicine, accountancy, engineering, architecture or such other profession as the Central Government may notify from time to time in official gazette. Clause 23C of Section 10 grants exemption to any income received by any person on behalf of any fund (other than Prime Minister Relief Fund, Prime Minister's aid to students fund) or institution established for charitable purposes which may again be notified by the Central Government having regard to the objects of the fund or institution and its importance through out India or State or States. The audit has pointed out that inspite of this specific provision, the Board has been allowing a general exemption under Section 10(23c)(iv) to certain professional associations with the result that the income from house property, income by way of dividend and interest and income from rendering specific services were additionally exempted. The Committee desired to know about those professional bodies who had benefitted through general exemption and the criteria followed in granting exemption to these bodies u/s 10(23C)(iv) while exempting others u/s 10(23A). In reply the Ministry stated that:

> In the case of following professional bodies exemption u/s 10(23C)(iv) was granted:
>
> (a) Institute of Chartered Accountants of India;
>
> (b) Institute of Company Secretaries.
>
> The conditions prescribed for obtaining exemption notification u/s 10(23C)(iv) were applied to see whether these professional bodies were entitled to such an exemption before it was granted.

15. The Committee further desired to know why it was considered necessary to allow a general exemption to incomes of these professional bodies u/s 10(23C)(iv) when the Act provides a specific exemption u/s 10(23A) to certain professional bodies. In reply the Ministry stated:

> "There is no express prohibition against grant of Section 10(23C)(iv) benefits to professional bodies covered by Section 10(23A) or other trusts exempt u/s 10(21), 10(22), Section 10(22A) so long as the trust satisfies the conditions of Section 10(23C)(iv) of the Act. Since the word "charity" as defined in Section 2(15) has a very wide connotation, as it includes any object of general public utility. Certain organisations which are covered by section 10(23A) or 10(21) or 10(22) or 10(22A) will also be covered by Section 10(23C)(iv). The organisation can choose whichever section in the I.T. Act it wants. This is also the judicial pronouncement vide C.I.T. *Vs* Bosotto Brothers : 8-ITR-41(Mad.)."

16. Further, the Committee desired to know the rational of having a specific Section 10(23A) for professional bodies alone when the objects of a professional bodies can be considered within the purview of a charitable purpose entitling it to the benefit of Section 10(23C)(iv). The Ministry Stated:

Clause (23A) of Section 10 was inserted by the Finance (No. 2) Act, 1965 with retrospective effect from 01-04-1962. Clause (23C) was inserted with effect from 01-04-1976 by Taxation Laws (Taxation Laws Amendment) Act, 1975. The Ministry of Law in their earlier opinion, advised that the special provisions of Section 10(23A) would prevail over the general provisions of Section 10(23C)(iv). Now the Ministry of Law in its latest opinion have observed as under:

> "It is not difficult to envisage a situation where the objects of an institution may, in addition to being objects of profession, be regarded as charitable purpose within the meaning of Section 2(15). By pursuing such charitable object, an institution because of its pursuing the objects relating to that profession would be governed u/s 10(23A) as well as it might be acovered u/s 10(23C)(iv). The fact that the institution is governed by Section 10(23A) may not take it away from exemption afforded by Section 10(23C)(iv)".

The rationale of rataining the earlier specific provision is that there may be professional bodies which do not come under the purview of Section 10(23C)(iv) on the grounds that they have not been established for charitable purposes."

17. During the course of evidence the Committee desired that an authoritative opinion of the Ministry of Law on the matter be sought. Representative of the Board undertook to consult the Attorney-General in this matter. In a subsequent note furnished to the Committee, the Ministry stated that the matter had been referred to the Ministry of Law for their opinion and reply was awaited.

III. Non-filing/Late-filing of Returns

18. Under Section 139(4A) of the Income Tax Act every person in receipt of income derived from property held under trust wholly for charitable or religious purposes is required to furnish a return of such income, if the total income, without giving effect to the provisions of Sections 11 and 12, exceeds the maximum of the amount which is not chargeable to income tax.

19. Audit has noticed that in 3 cases assessable in Kerala and Karnataka charges involving 13 assessment years, there was evidence available with the department that the trust had assessable income, and yet they were either not furnishing their returns or their income had not been correctly

assessed. The department did not take any action to call for the returns/ revised return. in the absence of any such returns, it could not be ensured that the trusts had been correctly assessed to tax. In case of non-filing and late of returns, penal provisions like charging of interest under section 234-A, levy of penalty under section 272 A and prosecutions proceeding under section 276cc can be invoved under the Act.

20. On being asked by the Committee to furnish statistics relating to the total number of trusts registered with the income tax authorities and the number of trusts filing returns in respect of each charge during assessment year 1992-93, the Ministry furnished the following information:

S.No.	CC/DIT Charge	No. of Trusts Registered	No. of Trusts filed Returns during 1992-93
1.	DIT (Delhi)	9305	2687
2.	DIT (Bombay)	28861	8573
3.	Hyderabad	2191	1006
4.	Cochin	1467	946
5.	Lucknow	598	693
6.	Chandigarh	2051	749
7.	Kanpur	1442	856
8.	Bhopal	441	322
9.	Patna (NER)	569	693
10.	Jaipur	161	340
11.	Pune	9878	1523
12.	Calcutta (DIT) on GIR	4772	3240
13.	Bangalore	13958	1794
14.	CC Tamilnadu	1607	1546
15.	Ahmedabad	14773	11517
16.	DIT (Madras)	4119	3265
17.	DGIT (IVN.) Bombay	6	6
	TOTAL:	96199	39756

21. From the above statistics furnished by the Ministry relating to the total number of trusts registered and the number of those filing returns in each charge during 1992-93, the Committee could not ascertain whether all the trusts were filing returns or not or whether unregistered trusts were also filing returns as the Committee noticed that in some charges for example Lucknow and Jaipur charges, the number of returns filed had been shown as much higher than the registered trusts under respective charges. Similarly, in other charges the number of returns filed were much less than the trust registered under respective charges. On being asked by

the Committee to give the exact number of trusts registered and those filing returns, the Secretary (Revenue) during evidence stated that from the look of the data it appeared that either the number of trust registered or the returns filed were not correct. It may be possible that more than one return might have been filed by the trusts or the number can be of more than one year. He further undertook to supply the exact numbers later on. The Ministry failed to furnish this information.

22. The Committee further enquired to know the position about those trusts which were not filing returns. In reply the representative of the Board stated:—

'There are certain cases where trusts are not filing returns, where they are not required to do so. There are recognised under section 10 as they are being exempted. There is no obligation on their part to file the return of income. Then there are certain institutions which do not have taxable income which need not file the return of income. Most of these trusts may be small trusts which have an income of less than Rs. 28,000 or 30,000/-'

23. The Committee also noticed that large number of trusts registered in Metropolitan cities were not filing their returns. On being asked whether the department had conducted any enquiry on the reasons therefor, the representative of the Board stated during evidence that there were certain categories of trusts which were not filing their returns of income and it was being looked after by the Chief Commissioners. This information could be furnished after getting it from the Chief Commissioners.

24. In their subsequent note furnished to the Committee, the Ministry stated:—

The factors for non-filing of returns are:—

(a) The income of trusts solely existing for educational and medical relief purpose is exempt under section 10(22) and 10(22A) respectively of the Income-tax Act and are not required to file their returns of income;

(b) A number of trusts though registered under section 12A of the Income-Tax Act, may not be carrying on any activity and being dormant do not file returns;

(c) Trusts whose income is below taxable limit (before giving effect to Section 11 & 12 of the IT Act) are not required to file their returns;

(d) Trusts notified under Section 10(23C) (iv)/(v) of the Income Tax Act are not required to file returns.

25. On being asked whether un-registered trusts are also filing returns and if so, their number in each charge and the procedure adopted by the Department in entertaining the returns filed by these unregistered trusts, the Ministry replied:—

"A total of 1056 unregistered trusts have filed their returns. In most charges they are being assessed in status of 'Association of persons" and no exemption u/s 10 and 11 of the Income Tax Act is being granted to them."

26. The Committee further desired to know the number of trusts registered during 1993-94 and how many of them have filed the returns, the Ministry stated:—

"*Total number of trusts registered during 1993-94.........	4323
Returns filed	1953

27. Under Section 10(22) exemption is granted to any income of a university or other educational institutions existing solely for educational purposes and not for purposes of profit. Likewise under section 10(22-A) any income of a hospital or an institution which has been set up for the reception, treatment, convalescence or rehabilitation of persons requiring medical attention is also exempt from income tax if such hospital or institutions is existing solely for philanthropic purposes and not for purposes of profit.

28. The Audit has mentioned a case of public charitable Trust in Tamil Nadu charge which was formed with the main object of providing medical relief to the poor & needy in and around a metropolitan city. However, during the previous years relevant to the assessment years 1988-89 & 1989-90 only 19 & 143 poor patients were treated. The cost of treatment provided to the poor patient during the previous year relevant to 1989-90 was reported to be Rs. 19.15 lakhs as against the total collection of Rs. 342.43 lakhs. Till the assessment year 1987-88 the assessments were completed after allowing exemptions of its income under section 11 & 12. For the assessment years 1988-89 & 1989-90, the entire income of the trust was treated as exempt under section 10(22A) & the assessments completed accordingly. According to Audit since the institute was being run on a commercial basis, the assessee trust could not be excluded under section 10(22A). Further as the conditions regarding application and accumulation of income as laid down in under section 11(1)(a) & 11(2) were not satisfied and in the absence of report of Audit of its accounts as required under section 12A (b) the income of the trust could not also be exempted under section 11 & 12. Tax due on the income of the assessee after making necessary adjustments of expenditure on depreciation and difference in foreign exchange rate worked out to Rs. 57.96 lakhs for the assessment years 1988-89 and 1989-90.

29. When the Ministry was asked to comment regarding the irregularity mentioned above, they informed the Committee that there is no require-

*These figures do not include the statistics of CCIT, Chandigarh and DIT (Exemption), Madras from where information is being collected.

ment under the law for hospital or other institutions referred to in section 10(22A) to file their returns of income voluntarily. The trusts referred to in section 11 have to file their returns of income on account of the specific provisions to this effect contained in section 139(4-A), where a hospital or institute does not satisfy the conditions of section 10(22-A) and its income is above the taxable limit the law requires such a hospital or institution to file its return of income. Failure to file returns in such cases attracts charging of penal interest under section 234A and prosecution under section 276 cc of Income Tax Act. If the institute makes false claim of exemption under section 10(22A), it is liable to prosecution under section 277. These deterrent provisions are meant to ensure that the concessions provided under the IT Act are not abused.

30. In the instant case of Madras Medical Mission, the benefits were granted under section 10(22A) by the Assessing officers. It was the Revenue Audit which objected to grant to total exemptions to the trust under section 10(22A). The audit objection was not accepted on the ground that term philanthrophy as referred to in the section does not mean free treatment. Remedial action was taken under section 263 of IT Act, 1961 by the Commissioner of income tax only as a precautionary measure but ITAT has restored the benefit of section 10(22A) to the trust.

31. When asked to elaborate as to whether there were a large number of such cases, the Ministry stated:—

> "There are a very large number of hospital trusts, convalescence homes, organizations offering medical treatment/aid which *prima-facie* enjoy benefits of section 10(22A) like the case of Madras Medical Mission. However, it was not possible to compile a comprehensive list of trusts enjoying benefits of section 10(22A) as they are not liable to file returns of income".

32. Since it is not mandatory for the institutions mentioned under section 10(22) & 10(22-A) to file returns, the Committee wanted to know if the Department did not consider it fit to amend section 10 of the Income Tax Act. The representative of the CBDT stated:

> "It is one of the suggestions which has been thought of. Every trust which has been registered and which is recognised under Sections 11 and 12 is under compulsion to file this return of income. Trusts and organisations which have been recognised under Section 10(23C) (iv) and (v) get their affairs looked into by a periodical evaluation that is once in three years. The only area where we are not in a position to systematically evaluate the performance of the trusts is the educational institutions and the hospitals under Section 10(22) and Section 10(22A). Even here the Act permits the Department to issue notice under Section 142 and call for returns and details, conduct a survey and insist on the filing of a return of income.

Whether we can also include these institutions covered under Section 10(22) and Section 10(22A) alongwith those institutions recognised under Section 11, to file returns is being examined."

33. The Secretary (Revenue) added:—

"It certainly requires a second look, particularly looking to the fact that a number of institutions are coming forward for exemption. Many of the Stock Exchanges are coming forward for this. They are all saying that they are not distributing any dividend. As sometime back some hon'ble Member mentioned that hospitals can also get exemption. So, these are quite complex issues from the point of view of tax laws which will have to be looked into. I do agree that this will have to be looked into and examined."

IV. Assessment of Religious and Charitable Trusts

34. Audit has pointed out that assessment of trusts earlier done as scrutiny cases under section 143(3) were brought under the purview of summary assessment scheme without any monetary restrictions from April, 1988. The statutory preconditions under sections 11, 12 and 13 of Income Tax Act are necessary to be examined by the assessing authorities so as to ensure that the legislative intent in giving tax relief to the public trusts are not abused. However, the Department has, by and large, been processing the trust asessments in a summary manner accepting the returned income without independently applying the provisions of sections 11, 12 and 13 of the Act, to the public religious and charitable trusts or institutions. Since trusts can get immunity from taxation only on fulfilment of certain statutory conditions, assessments done under the summary scheme leave no scope for the asessing authorities to examine these aspects. Audit has further pointed out that in West Bengal charge assessments completed during assessment years 1989-90 and 1990-91 under summary assessment scheme numbered 2513 & 4371 as against 282 & 328 done under scrutiny. The percentage of scrutiny assessment was 7.6% in the assessment year 1989-90 & 5.7% in the assessment year 1990-91. The bulk of the assessments (93 to 95%) was completed in a summary manner under section 143(i) of Income Tax Act. Moreover, cases processed under section 143(i) were found to have been re-opened very sparingly for scrutiny.

35. The Committee desired to know the reasons that prompted the Government to bring the assessments of trusts from scrutiny to summary assessments from April, 1988 onwards. In a note furnished to the Committee, Ministry stated:—

"In view of the increasing volume of work and the growing manpower constraints, a conscious decision was taken to include assessments of trusts under Summary Assessment Scheme. This was within the object of paying more attention to bigger cases of trusts."

36. The Committee further desired to know as to how do assessing authorities ensure that the statutory conditions under Income Tax Act are complied with by all the trusts for getting immunity from taxation while assessing the trusts under Summary Assessments Scheme. In a written reply, the Ministry stated:—

> "Trusts having income more than Rs. 50,000/- before giving effect to the provisions of section 11 and 12 are required to file audited report in Form 10-B. The Audit Report, *inter-alia,* includes all conditions and information which are necessary for allowing exemption. Similary, the Income Tax return Form 3-A in which person claiming exemption under Section 11 contains columns seeking information about the amount of income applied or accumulated for charitable or religious purposes, amount if any, chargeable to tax due to non- compliance to provisions of Sections 11 and 13 and investment of Trust funds to show compliance to Section 11(5) and Section 13 (1) (d). Thus, there are adequate safeguards to ensure that eligible trusts have fulfilled all conditions for being given benefits of Section 11 even were assessments are completed under Section 143 (1) (a)."

37. The Committee were further informed that:—

> "The Income Tax return Form 3A, in which person claiming exemption under Section 11 files the return, contains columns seeking following information:—
>
> (i) the amount of income applied or accumulated for charitable or relgious purpose and amount, if any, chargeable to tax due to non-compliance to provisions of Section 11 and Section 13.
>
> (ii) Information regarding investment of trusts funds to show compliance to Section 11 (5) and Section 13(1) (d).
>
> (iii) The return to be accompanied by Audited report if the trust's income exceeds Rs. 25,000/-*. The Audit report should be furnished in prescribed Form 10-B certified by the Accountant that accounts give a true and fair view of profit and loss and the state of affair of the institution or trust.
>
> (iv) The Auditor's report in Form 10-B indicates application or use of income or property for the benefits of persons referred to in Section 13(3).
>
> (v) Where trust seeks to accumulate its income, it has to give a notice under Section 11(2) in Form 10 specifying the purpose for which accumulation is sought and the period of accumulation.
>
> (vi) The person filing the return has to verify that information given is complete and correct in all respects. If the person makes a false statement in his return or its accompanying form, he will be liable to be prosecuted under Section 277 of the Income Tax Act.

*Increased to Rs. 50,000/- w.e.f. 1.4.1995 (AY 1995-96) by amending 12 A(b) to Finance Act, 1994.

It was stated that all the above provisions are adequate to monitor even cases completed under Section 143 (1) (a) and an Assessing Officer will not confer the benefits of Section 11 unless the above conditions are fulfilled. Thus, sufficient safeguards exist to ensure that the concessions are not misused even in cases covered under Section 143(1) (a)."

38. The Committee further desired to know whether the scope of Section 143(1) (a) is wide enough to take care of all conditionalities of grant of exemption to charitable and religious trust. In a subsequent note furnished to the Committee, the Ministry stated:—

"Regarding the scope of section 143(1) (a) Circular No. 689 dated 24.8.1994 has been issued by the Board wherein it has been explained that an incorrect claim, if such incorrect claim is as apparent from the existence of other information in the return or the accompanying account or documents can be disallowed under Section 143(1) (a). It can be seen that Form No. 3-A and Annexures thereto and also the format of Audit report *viz.* Form 10-B have been so designed as to bring out any violations of all essential conditions for grant of exemption to charitable and religious trusts. It is, therefore, felt that the scope of Section 143(1) (a) will take in its ambit any claim which is not in accordance with law."

39. The Committee further asked during evidence whether the Department scrutinises all the trusts which have filed the returns. In reply the representative of the Board stated:—

"Every return that comes in from a trust is subjected to scrutiny under Section 143(1) (a) for *prima facie* assessment. A return from a trust is not complete unless the Chartered Accountant's report is attached alongwith the return of income. Previously, the limit was 25,000/-. Now, it has been increased to 50,000/-. The Chartered Accountant's report, which has to be enclosed, gives full details regarding the functioning of the trust; the investment pattern the trust has followed; whether the trust has used its income for the stated objectives; whether there has been any default etc. All these will enable the processing ITO to look into it and make a *prima facie* assessment. In case there are some variable features noticed, then that case would be picked up for scrutiny and an assessment made."

40. On being asked further as to the number of returns that have been scrutinised out of the 39756 returns filed by trusts during 1992-93 and the yardsticks followed by the Department in scrutinising these returns, the representative of the Board stated:—

"We have this corpus donation exceeding Rs. five lakhs. There are cases where foreign donations have come to the trust; there are cases where the donations exceed Rs. 25 lakhs; where the assets of the trust are more than Rs. 50 lakhs. There are cases where we have conducted some search operations in respect of the trust. There are cases involving accumulation of funds for 10 years and so on. There are violations in the investment pattern under Section 11 and in the administrative pattern under Section 13. In addition to all these cases which are scrutinised, we pick up another five per cent of the cases for scrutiny."

41. However, in their subsequent note furnished to the Committee, the Ministry have mentioned the guidelines formulated for selection of trusts cases for scrutiny during financial year 1994-95 as under:—

"Under the general guidelines for selection of cases for scrutiny during the financial year 1994-95, as are applicable to all cases (including the trust cases), the following assessments are to be compulsorily scrutinised:—

(i) All assessments involving search and seizure and survey under section 133 A;

(ii) all reassessments under section 147, set aside assessments and assessments requiring compulsory scrutiny under section 44 AD or 44 AE of the Act;

(iii) any other assessment where scrutiny is recommended by the Investigation Wing based on information in their possession.

2. Apart from these general parameters, certain specific guidelines have been formulated for selection of trust cases for scrutiny. The guidelines applicable during the financial year 1994-95 are as follows:—

(i) cases of violation of sections 12 and 13;

(ii) cases of gross receipts or expenditure exceedings Rs. 25 lakhs;

(iii) cases of gross donations to corpus funds exceeding Rs. 5 lakhs;

(iv) cases of investment in immovable property exceeding Rs. 5 lakhs;

(v) cases where the value of assets exceeds Rs. 50 lakhs;

(vi) cases where exemptions are claimed under sections 10(21), 10(22) or 10(22A);

(vii) assessment for the assessment year immediately succeding the assessment year upto which accumulation of funds was allowed under section 11(2).

From among the rest of the cases, 5 per cent of the returns will be taken up for scrutiny purely on random selection basis.

It is expected that with the above guidelines there would be an effective check on any improper claims of exemptions.

42. As regards the linking up of the past records for the purpose of Section 143(1) (a), the Ministry in a note stated:—

"The new procedure for assessment under which all the returns are initially processed under Section 143(1) (a) of the Income Tax Act for *prima facie* adjustments if any and selecting only a small percentage of the cases for detailed scrutiny was introduced w.e.f. asstt year 1989-90. Under the specific provisions of Section 143(1) (a) following adjustments shall be made in the income or loss declared in the return namely;

(i) any arithmetical error in the return, accounts or documents accompanying it shall be rectified;

(ii) any loss carry forward deduction, allowance or relief which, on the basis of the information available in such returns, accounts or documents, is *prima facie* admissiable but which is not claimed in the return shall be allowed; and

(iii) any loss carried foward, deduction, allowance or relief claimed in the return which, on the basis of the information in such return, accounts or documents is *prima facie* inadmissible shall be disallowed.

It may be seen from the above provisions that the *prima facie* allowances and disallowances can be made only on the basis of information available in the return or the accompanying accounts or documents. No reference to past records is permitted to make such adjustments. Accordingly, in the Chairman's DO No. 48/2/89/AP. DOMS/268 dated 5.5.89, the Assessing Officers were advised to link the past records with the current year's returns immediately after the processing under section 143(1) (a) and sending the information to the Computer Centres in the form of data entry sheets. They were also advised to select cases for scrutiny after the linking of such past records.

Through Board's communications dated 17.7.1991, it was again emphasised that returns should be linked invariably and expeditiously with assessment records after they are processed under Section 143(1) (a) of the Income Tax Act."

V. Donations Towards Corpus

43. Donations specifically made towards the Corpus of the trusts created for charitable or relgious purpose are not included in the total income of trust for levying tax. The donor also enjoys the tax exemption for such donation. The inherent intention in granting tax exemption is that the amount so received by trust as donation to Corpus should be utilised for charitable and religious purposes. The twin "Corpus" has not been defined in the Income Tax Act, 1961. According to the Ministry it is understood as the amount received to augment the capital assets-movable and immovable of the trust to enable it to generate income to carry on with its objects.

However, under Act, no time-limit has been prescribed for utilisation of funds received as donations for the corpus of the trust. While the donor and the donee trust enjoys the benefits of tax exemptions, the corpus funds may remain unutilised for religious and charitable purposes indefinitely. If subsequently any of such trust become defunct, the amount standing in the corpus of the trust will escape the tax liabilities without even being applied to avowed objects.

44. Audit has pointed out a case under the Uttar Pradesh charge where in a charitable trust was created in March, 1978 with a total donation of Rs. 45,000/- with object of constructing a hospital to give free medical relief to the general public, but subsequently the hospital was not constructed up to March 1983 and the entire balance amount of Rs. 82,670/- as on 31.3.1983 was lying unutilised.

45. During evidence, the Committee enquired to know the procedure being followed by the Department in regard to corpus income of defunct trust. The representative of the Board while defining the defunct trust and the procedure being followed in this regard stated:—

> "A defunct trust is something which is not carrying on its activities. Those trust which are set up with a particular objective but are not able to garner donation or get corpus donation to enable them to carry on. They apply for permission to accumulate these incomes till such time as they are able to frutify the object of the trusts. Till then, we allow for a period of maximum 10 years to accumulate their income. If these trusts are not able to fulfil their objective, they continue to be defunct and there is nothing under the Act today tax those corpus donations. In fact, there is a provision in the Act not to treat this corpus donation as income."

46. On an enquiry by the Committee whether there was any provision in law which could bring such moneys within the ambit of taxation or withhold or deny exemption to trust which have become defunct and whether the Ministry considered is not desirable to prescribe a time-limit within which corpus fund should be utilised, the Ministry informed that the public trusts, once set up, do not cease to exist on account of the principle of 'cy pres' and the provisions contained in the code of Civil Procedure and certain Public Trust Acts of the States. Further, some of the trust deeds themeselves mention that in the event of the trust becoming non-functional, the settlers will handover the corpus to a trust with similar objectives.

47. As the money is accumulated and in the Act there is no provision to cover such money under the Tax net, the Committee during evidence asked whether it does not bother the Department. The representatives of the Board stated:—

> "If the defunct trust does not earn any income or if the income is below the taxable limit, there is nothing that can be done. If the

defunct trust makes an income which brings it to the taxable fold, then it becomes a taxable entity. Then, all the penalties, liabilities for not paying taxes will be visiting the trusts."

The Secretary (Revenue), further added:—

"In addition to this, they have to give Chartered Accountant's Certificate, if the income exceeds the taxable limit. We see whether the income of the Trust has really been applied for the purpose for which it is created. It is expected that the Chartered Accountant will give certificate strictly in accordance with the object of the trust. Secondly, if they do not file any return and still they get income, during the process of survey and search by the intelligence agency, they can get the information and the trusts can certainly be taken to task. But there is no mechanism as such that at every stage all the trusts are inspected by our authorities and verified on ground whether they have utilised the income of the trust for fulfiling the object for which it was created."

48. On being asked as to who declares the trust as defunct. The representative of the Board stated:—

"There is no formalised procedure to declare it defunct. When we get the return or in the process of our survey, when we look into aspects of functioning, we find it is not working, we take it as defunct trust."

49. Asked further whether the Department issues any notice to particular trust which has become defunct, the representative of the Board further stated:—

"There is no such procedure to say it a defunct trust or functioning trust. If the trust does not fulfil the objective for which it was created, naturally it assumes the category of normal tax payer."

50. Further the Committee were given to understand during the evidence that it is only when the donor wants to claim exemption of the donation made that the Department come to know of the same. The Committee asked to know the procedure being followed by the Department to tax the trust in cases where the donor makes off the record donations. The Secretary, (Revenue) stated:—

"Many well-known religious institutions, educational institutions get bundles of jewellery or cash etc. If the trust has received it off the record, we will not be able to trace it. It is very difficult to trace such donations. The trusts stand to benefit by the donations. ....long time ago this problem had been gone into when the 1962 Act was discussed in the Select Committee. They went into the question of how to deal with the anonymous donations. .... There was always an apprehension that money could be transferred by way of known or anonymous donations and one could get away from the penalties imposed by law. There was a recommendation also in this regard."

51. As the trusts are created for a well defined purposes and money has to be spent on those purposes the Committee asked during evidence whether the department checked to see that the money utilised is on the aims and objectives for which the trusts have been set up. The representative of the Board stated:—

"That is the main job that is done when the return is filled. It is scrutinised in the Department on these lines."

52. While commenting on the case pointed out by the Audit (referred to in para 44 above) the Ministry stated that the trust has been receiving interest income below the taxable limits. Therefore, the trust was not liable to file returns.

53. On being asked whether the department had made any effort to find out whether there were similar cases in their charges, the Ministry informed that no separate efforts had been made by the department. Such dormant cases are usually reviewed and deleted from the blue Book or General Index Register from time of time.

VI. Voluntary contribution not made with specific direction towards the corpus

54. The Income-tax Act, 1961 under section 12 provides that any voluntary contribution received by a trust created wholly for charitable or religious purposes, not being contributions made with specific direction that they shall form the corpus of the trust, shall be deemed as income derived from property held by the trust. Thus the donations towards earmarked funds such as building fund, scholarships funds etc which are merely appropriation of income for a specific purpose can not be taken as donation to the corpus fund. Such income are includible in the total income of the trust.

55. Audit has during the review noticed that in the case of 15 assessee trusts the exclusion from total income of donations to earmarked funds/voluntary contribution without specific direction of the donor to treat them as corpus fund, has resulted in non-assessment of income amounting to Rs. 290 lakhs having tax effect of Rs. 231 lakhs in 22 assessment over the assessment year 1978-79 to 1989-90. The Department is stated to have accepted the audit observations in six cases.

56. The Committee desired to know the methodology adopted by the department to ensure inclusion in the total income of the donations to earmarked funds or voluntary contributions or grants made without specific direction of the donors to treat them as corpus funds. The Ministry in reply stated:—

"The statute is clear on the nature of treatment to be accorded to the amount received by a trust towards the 'corpus' and the need for the trusts to comply with the rigours of provisions of Section 11 in respect of all other income."

57. With regard to the steps taken/initiated to recover the pending revenues in the cases highlighted by the audit, the Ministry in their note stated:—

"Remedial action have been initiated/are being initiated in all cases as precautionary measure. The revenue-effect involved in these accepted cases totals Rs. 2,47,000/-."

"The Ministry has accepted objection only in four cases, including the Assam case.

The latest position in the case of Ganesh Mandir Society, Shillong (Called the Assam case) is that re-assessment proceedings have been initiated by reopening the assessment. The assessing Officer is yet to complete reassessment proceedings. The correct amount of tax revenue and the recovery of the tax due, if any, will be known only on completion of the reassessment proceedings"

VII. Irregularities in the application of Trust properties and income

58. Under the Income-tax Act income derived from property held under trust wholy for charitable or religious purposes is exempt to the extent to which such income is applied for these purposes. The crux of the statutory exemption under the Act is not the income earned from property held under trust but the actual application of revenue to charitable or religious purpose*.

59. Entire income of the trust becomes liable to tax if part or whole of the income or property is directly or indirectly applied of used for the benefit of a certain category of persons such as author/funder of the trust/ institution, any trustee or manager or substantial contributors etc. or any specified relative of the aforesaid persons or if the funds are invested otherwise than in specified modes such as Government securities, deposits in Post Office or in a scheduled bank etc.

60. The exemption is also not available to a charitable trust/institution if the benefit is restricted to any particular religious community or caste or to the employees or members of a trust/institution or substantial donor.

61. Audit on test check of assessment records for the assessment years ranging from 1981-82 to 1990-91 in the case of 11 assessees in Andhra Pradesh, Assam, Delhi, Gujarat, Kerala, Orissa, Tamil Nadu and Uttar Pradesh, charges has noticed that properties held under trust or trust funds were used or utilised for the benefit of prohibited category of persons or their relatives or the benefits were restricted to a particular religious communmity or caste resulting in non-assessment of income amounting to Rs. 70.11 lakhs involving the tax revenue of Rs. 34.11 lakhs in 20

* Gangabai Charities Vs. CIT, 196-ITR-ST 30(SC)

assessments. The department is stated to have accepted the audit observations in 8 cases.

62. On being asked by the Committee the exact amount of tax effect involved in 8 cases which have been accepted by the department out of the 11 assessees and whether the tax amount has since been recovered from those 8 cases including the case illustrated by audit under the Assam charge. The Ministry informed the Committee:—

"This Para contained case of 9 assessees, and not 11, as stated. Irregularities in following 4 cases were accepted.

		Tax Effect stated in Audit (in lakhs)
1.	Jeypore Evangelical Lutheran Church, Jeypore Orissa	4.99
2.	Council of Baptist Church in NER India	10.13
3.	Prince Mukarran Jah Trust for Education and Learning, A.P. Charge	4.01
4.	Haji Essa Haji Mussa Trust, Kerala	2.02
		21.15

Out of the above four cases remedial action in respect of Prince Mukarran Jah Trust and Haji Essa Haji Mussa Trusts had been completed. The Income Tax Appellate Tribunal (ITAT) had given relief in respect of former case.

As regards the Assam case and also that of Orissa reassessment proceedings had been initiated u/s 147. The reassessment proceedings were pending and would be completed after ascertaining the eligibility of Section 11 to the assessee trusts."

63. The Committee enquired as to what steps are taken by the assessing authorities to ensure that undue benefits of tax exemption under the provisions are not enjoyed by the disentitled trusts. The Ministry stated in reply:—

"Where the total income of the trust or institution as computed under this Act without giving effect to the provisions of Section 11 and Section 12 exceeds twenty-five thousand rupees[4] in any previous year, the account of the trust or institution for that year are required to be audited. Part-II of Audit Report contains information regarding application or use of income or property for the benefit of persons referred to in Section 13(3). In Part-III of the report, information regarding investment in concerns in which persons referred to in Section 13(3) are interested is also incorporated. From the Audit

4. Rs. 50,000 with effect from April 1, 1995.

Report, it is easy to identify cases where funds and properties of the trusts are misused by persons referred to in Section 13(3) of the Act. The cases are also subjected to detailed scrutiny. In a case of a trust where benefit is restricted to members of any particular religious community or caste as is evident from the trust deed, exemption is not allowed."

64. The Committee further desired to have charge-wise list of cases alongwith tax effect in each such cases detected by the Department during the last 10 years where properties under trust or trust funds were utilised for the benefit of prohibited category of persons or restricted to particular religious community or caste in contravention of the provision of the Act. In their reply, the Ministry stated that:—

"No separate information was being maintained in respect of such trusts."

VIII. Irregularities relating to Registration of Trusts

65. One of the conditions for claiming exemption of income from tax is that the recipient of Trust income shall make an application for registration of the trust or institution u/s 12A of the Income Tax Act, 1961 in a prescribed form (Form 10A) to the Chief Commissioner/Commissisoner of Income-tax before the expiry of a period of one year from the date of creation of the trust or the establishment of the institution. By Finance (No. 2) Act, 1991, this condition has been relaxed and application can now be made even after the expiry of the aforesaid period. The delay may be condoned by Chief Commissioner/Commissioner of Income-tax, on reasonable ground to be recorded in writing, and in that case the exemption will be available from the date of creation of the trust or institution [Section 12A(a)(i)]. If, however Chief Commissioner/Commissioner of Income-tax is not so satisfied, and does not condone the delay then provision of Section 11 will be applicable only from the 1st day of financial year in which the application is made and registration granted. Alongwith the application in prescribed Form for registration, a trust/institution has to furnish; (i) copy of instrument under which trust/institution is created; (ii) where the trust or institution has been in existence prior to the financial year in which the application for registration is made, two copies of accounts relating to such period, not more than three years immediately preceeding the year in which application is made. primarily the registration is granted/denied on the basis of objects contained in the instrument under which trust/institution is created/established.

66. On being asked by the Committee the circumstances that led the Department to bring this change in procedure under the Finance (No. 2) Act, 1991 for registration of trust or institution, the Ministry in reply Stated:—

"Prior to 1.10.91, the law provided that the Chief Commissioner or

Commissioner can, in his discretion, admit an application for the registration of any trust or institution after the expiry of a period of one year from the date of creation of the trust or establishment of the institution. With effect from 1st October, 1991, the law was amended to provide that in the event of the Chief Commissioner or Commissioner refusing to condone the delay in filing an application for registration, the trust or institution will lose the benefit of the income-tax exemption in respect of the period prior to the financial year in which the application was made. Where the delay is condoned by Chief Commissioner or Commissioner, the position remains the same as it was prior to 1st October, 1991.

The aforesaid amendment was made to overcome the hardship in the case of trusts or institutions which failed to file the requisite application in time and the Chief Commissioner or Commissioner of Income-Tax, rightly or wrongly, refused to condone the delay. (The order of Chief Commissioner or Commissioner, refusing to condone the delay is not appealable). In such cases, the trust or institutions were barred in perpetuity from seeking exemption u/s 11 or 12 even if such entities were managed by dedicated and honest workers and were carrying out their objectives in the fields of relief to poor, education, medical relief, etc."

67. The Committee further desired to know the factors that are to be taken into consideration by CCIT/CIT before allowing registration where applications are made after the expiry of the prescribed period of one year as relaxed under the Finance (No. 2) Act 1991 and the reasons that can be construed as sufficient by the trust/institutions for making application after the expiry of one year period. In reply the Ministry informed:—

"The sufficiency of reasons for condoning the delay in the filing of the application for registration of a trust or an institution is a matter of fact. The Chief Commissioner or Commissioner who condones the delay, has to record his reasons therefore in writing. For example, circumstances which are beyond the control of a person would come within the ambit of the expression 'for sufficient reasons'."

68. The Committee desired to know the period for which the registration once granted, remains effective. In their reply, the Ministry stated:—

"Registration of the trust is not required to be reviewed every year. There is no time-limit for which registration once granted remains effective."

69. On being asked further why no time limit for the registration to be effective u/s 11 had been considered necessary whereas an organisation or institution is notified for exemption u/s 10 (23C) (iv)& (v) and Section 80 G for specified period and whether the Ministry considered it not desirable to grant registration to the trust for a specified period and renew it after detailed examination of their accounts and past activities vis-a-vis their

objectives in order to deny the benefits to undeserving cases, in their note furnished to the Committee, the Ministry stated:—

"Notification of an institution or trust for the purpose of clause (iv) and (v) of section 10(23C) has the effect of providing income-tax exemption on the income of these entities. On the other hand, registration u/s 12A(1) of the Income-tax Act, is only one of the conditions for claiming exemption u/s 11 or 12. This registration by itself does not grant any tangible benefit to the trust.

The trusts seeking exemption of their income u/s 11 or 12, have to file returns of their income if their total income exceeds the exemption limit. The requirement of filing returns by these trusts enables the Assessing Officers to verify their claims for exemption u/s 11 or 12 and also make a detailed examination of their accounts where the case is selected for scrutiny assessment.

It is only in cases of trusts where the total income is below the exemption limit that an opportunity for examination of their accounts is not material as no revenue implication is involved.

In view of the above, there does not appear to be any need for providing that the registration will be valid for a specified period."

70. Audit has pointed out in their review Report that 9 assesses under 5 Chief Commissioners charges were either not registered with Income-tax Department or their application for registration were pending with it or they were granted registration from a date later than that applied for. Their assessment were completed treating them as registered Charitable or Religious trusts resulting in under assessment of income of Rs. 71.77 lakhs with tax effect of Rs. 42.20 lakhs in 14 assessment over the assessment years 1988-89 to 1991-92.

In Gujarat Charge, a charitable trust which was created on 22nd March 1981 with the object, among other things, of providing medical relief, construction, and maintenance of hospital etc., claimed complete exemption of its income as a hospital or medical institution for the assessment year 1989-90. This claim was rejected by the assessing officer on the ground that the assessee trust itself did not run a hospital or medical institution. However, exemption was granted to the assessee under section 11 as a charitable trust and the assessment was finalized accordingly in a scrutiny manner, in July 1990 (rectified in January 1991). Though the trust was created on 22nd March 1981 it applied for registration only on 17th October 1990 after a lapse of more than years and the registration was granted by the Commissioner of Income Tax effective from the date of filing of application for registration i.e. 17th October, 1990. The assessee trust was, thus, not eligible for exemption of its income for the assessment year 1989-90. The incorrect grant of exemption resulted in under-assessment of income of Rs. 14.24 lakhs and non-levy of tax of Rs. 10.16 lakhs including interest for default in payment of advance tax. Wealth tax payable by this trust work out Rs. 1.31 lakhs on its net wealth of Rs. 65.95 lakhs for the assessment year 1989-90.

The audit observations were not accepted by the department stating that the Commissioner of Income Tax has condoned the delay of more than 8 years in filing the application, which according to Audit was factually not correct, Subsequently the Ministry have accepted the contention of Audit.

71. The Committee enquired to know the specific reasons for which the application for registration remain pending with the income tax authorities for considerable longer period. The Ministry in a note furnished to the Committee stated that:

There were 12 cases cited by the audit in Para 2.10.11. These included two cases wherein there were incorrect grant of exemption u/s 11 in respect of a discretionary trust and in a case where audit reports had not been filed. Thus these two objections were accepted. Only 10 cases involved grant of benefits of Section 11 despite non-registration of trusts. Of these in six cases registration had been granted as stipulated in Section 12A and therefore objections were not accepted.

Only in respect of four cases of non-registration the objection was accepted.

1.	Samman, Orissa	:	Registration granted on 31.12.92 with retrospective effect from 1.4.88. The application was apparently in time.
2.	People Development Communication Network, Orissa	:	No application filed u/s 12A for registration
3.	Team for Human Resource Education and Action for Development, Orissa	:	Registration application filed late but the delay not condoned by CIT
4.	Dinbandhu Charitable Trust, Gujarat	:	Trust created on 26.6.87 but registration not given

From the above it is clear that only in one case viz., Samman of Orissa registration was granted after about 3 years.

From among the non-accepted objections only in one case, viz., the case of Satpura Integrated Rural Development Institution the application received on 8.1.1979 was disposed on 18.1.1982.

Hence the analysis of cases cited in Para 2.02.11 reveals that in general there are no undue delays in registration of trusts.

Some of the reasons for the delay include filing of incomplete application, time taken for verification of supporting documents, modifications if any, to be carried out in trust deeds or memoranda of the society etc. There can also be delay due to work pressure in the Office of the Commissioner of Income Tax.

The Income-tax Law while providing a time-limit for filing of application seeking registration by trusts u/s 12A(a), has not prescribed any time-limit for grant of the same. So long as a trust applies within the prescribed time-limit, the trust would have complied with the provisions of Section 12A(a) and benefits u/s 11 would be available to it, unless the registration is rejected subsequently.

IX. Non-fulfilment of conditions for accumulation of Income

72. Under section 11(1)(a) Tax exemptions are given to the 'income derived by the charitable and religious trusts to the extent the amount are applied for the objects of the trust or accumulated and set apart for such purposes so long as it does not exceeds 25% of its income if however, trust is unable to apply 75% of its income during the year or wishes to accumulate more than 25% of its income for future utilisation and the trust seeks exemptions from the tax for the current year, it has to fils form No. 10 to the Assessing officer stating the purpose for which the accumulation is sought, which in no case should exceed ten years and the money so set apart is invested or deposited in the prescribed modes such as Government securities, Bank deposits etc. if the income so accumulated is not applied for the specified purpose within the prescribed period or ceases to remain invested in the prescribed modes then such income is deemed as income of the trust/institution in the previous year in which the default occurs or the year immediately following the expiry of the prescribed period.

73. Audit has pointed out that during the review it came to their notice that in the case of 66 trusts under Andhra Pradesh, Delhi, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab and Uttar Pradesh charges either the prescribed procedure for the accumulation of more than 25% of the total income for prescribed period and purposes was not followed or the accumulated income was not utilized for specified purposes within the prescribed limit with the result assessable income of Rs. 354.21 lakhs in 78 assessments has led to under charge of tax of Rs. 191.98 lakhs. ~~The~~ Ministry accepted audit objections regarding mistakes made in allowing accumulation under Section 11(2) in eight cases. The amount involved in these cases is 10.06 lakhs. The Ministry also informed the Committee that remedial action had also been taken. Besides even in respect of cases where Audit objection had not been accepted it was reported by the Ministry that remedial action was being taken as precautionary measure. The Committee asked how the department ensured

that accumulated income is applied by the trust within the specified period for the specified purpose. In reply the Ministry stated:

"A register has been prescribed for keeping watch on application of amount accumulated by the trusts or institution u/s 11(2) of the Act."

74. On being enquired further whether the subsequent assessments of the same trust checked to watch compliance of the conditions with regard to the utilisation of accumulated income the Ministry informed:

"The returns were examined to ascertain whether the accumulated amount has been applied within the specified time on the object for which accumulation was sought for and allowed."

75. Audit has also found during the review that no register of accumulation income by trusts and their utilisation has been maintained in any of the wards in Punjab, Delhi and Union territory of Chandigarh despite being prescribed by the CBDT in 1984 to maintain such register. The Committee enquired as to what other control or check is exercised by the department in these cases in the absence of registers. The Ministry stated:—

"Whenever the total income of the trust or institution as computed under the Act without giving effect to the provisions of Section 11 or 12 exceeds reupees twenty-five thousand (substituted by fifty thousand from assessment year 1995-96 by Finance Act, 1994) the trust/institution is to file along with its return of income an audit report in Form 10-B. This contains the information regarding any part of income accumulated or set apart for specified purposes U/S 11(2) of the Act in any earlier year. It also contains information regarding application of income for purposes other than charitable or religious purposes, or cease to remain invested or deposited in any of the form or under specified in Section 11(5) or is not utilized for the purpose for which it was accumulated or set part. Therefor, adequate check can be exercised by the scrutiny of the Audit Report."

76. According to the Ministry if the accumulated income of trusts is not applied to declared objectives within the prescribed time limit, no penalty has been provided in law for violation of conditions of accumulation except to tax in the year in which the default occurs. the Committee enquired whether the Ministry consider it not necessary to incorporate a penalty provision in the Law in case of violation of condition of accumulation and if so, the steps taken by the department in this regard. In a post-evidence reply the Ministry stated:—

"No penalty has been provided for violation of conditions of accumulation u/s 11(3), as in the event of violation, the income accumulated is brought to tax. The income is charged to tax in the year in which the conditions of accumulation are violated. This itself is considered to be adequate compensation for breach of the conditions in the case of charitable organizations. Therefore, a penalty in addition to the aforesaid threatment does not appear to be reasonable or necessary."

X. Irregularities in the investment of Trust Funds

77. Audit has also pointed out cases in which trusts funds were invested in modes and forms others than those prescribed under Section 11(5). Section 13(1)(d)(i) of Income Tax Act stipulate that if any funds of a charitable or religious trusts are invested after 28 February, 1983, in any mode other than those prescribed, no exemption would be available to the trust under sections 11 and 12 of the Act. The specified modes are Government Saving Certificates, deposit in Post Office Saving Banks deposits with any Scheduled Bank or Co-operative Bank, investment in Central or State Government securities etc. However, the proviso (iia) under section 13(1)(d) permits the change of investment pattern within one year of acquisition of such asset or 31st day of March, 1993, whichever is later. The cut off date for disinvestment was 31 March, 1992 which was subsequently extended to 31 March, 1993 by Finance Act 1992. The Committee enquired whether the proviso (iia) of Section 13(1)(d) does not make the provisions of Section 13(1)(d), which are meant for regulating the investment or deposit of trust funds, ineffective and condone the past violation of the provisions of section 13(1)(d). In reply the Ministry stated:—

> "The proviso (iia) to section 13(1)(d) was inserted by the Finance (No. 2) Act, 1991, w.e.f. 1.4.83, to overcome the hardships of those trusts and institutions which had large holding of shares of companies or other organizations on a long-term basis and were not able to liquidate their deposits and shareholdings within the stipulated time without incurring heavy losses. Hence, this provision was given retrospective effect."

78. According to the review conducted by Audit of nine assessee Trusts in the case of a trust assessed in Gujarat charge, it was revealed from audit reports of the Chartered Accountants on the accounts of the previous year, relevant to assessment year 1989-90 and 1990-91, that the trust had some investments otherwise than in the prescribed forms and modes. Further, trust funds were used contrary to the scheme and rules framed thereunder.

79. In view of these violations pointed out in the audit report, the trust was not eligible for exemption and its entire income was required to be brought to tax. Wealth tax was also leviable on the market value of its assets/property. Failure to do so resulted in under-assessment of total income of Rs. 37 lakhs and non-levy of income tax aggregating Rs. 23.43 lakhs. Wealth tax aggregating Rs. 5.48 lakhs was also leviable on the net wealth of Rs. 217.74 lakhs for the two years.

XI. Business income not brought to tax

80. Exemption from levy of tax in respect of income by way of profits and gains of business of a trust is available with effect from assessment year 1984-85, only if the work is mainly carried on by the beneficiaries of the trust/institution wholly for charitable purposes or the business consists of printing and publication of books or is of a kind notified by the Central Government which is carried on by a trust wholly for public religious purposes. In both cases the trust or institution is required to maintain separate books of accounts in respect of such business.

81. In the case of 4 assessee trusts, (Gujarat and Punjab Charges), assessed income by way of profits and gains of business undertakings was not brought to tax, though the business did not consist of the permitted kind or was not being carried on by the beneficiaries of the trust. Separate books of accounts were also not being maintained in these cases. The omission to bring to tax the business income in 8 assessments for the assessment years 1984-85 to 1990-91 completed under scrutiny, led to under-assessment of income by Rs. 31.58 lakhs with tax effect of Rs. 17.40 lakhs.

82. In Punjab charge, a trust created for advancement of language and culture of the State, was registered as a charitable trust in November 1979. It was observed that during the previous years relevant to assessment years 1984-85 and 1986-87, the trust had business income of Rs. 8.78 lakhs and Rs. 4.04 lakhs respectively from publications and sale of newspapers. Against this income, the amount applied for charitable purposes was only Rs. 11,153 and Rs. 9,655, respectively in the two years. Thus, the predominant object of the activity of the trust was profit earning, and its business income of Rs. 12.82 lakhs in the two years was liable to tax of Rs. 7.95 lakhs. The assessee had also invested its funds in the business instead of specified investments.

XII. Gift Escaping Assessment

83. Under the Gift Tax Act 1958, donations made by any person to any charitable institution or fund which is not exempted under the provisions of the Income Tax Act are liable to gift tax.

84. Audit during the review pointed out a case of trust in Tamil Nadu charge, which had received a sum of Rs. 4 lakhs towards its corpus from a political party during the previous year relevant to assessment year 1985-86, the assessment of which was completed in March 1988 under scrutiny. However, scrutiny of relevant records by Audit revealed that the sum was utilised by Trust for setting off losses of earlier years and for replacement of loans in connection with printing press and not for charitable purposes. The contributions were not exempted under the provisions of the Income Tax Act. The omission to do so resulted in the escapement of gift tax of Rs. 80.250 for assessment year 1985-86.

85. The Ministry of Finance informed the Committee in post evidence replies that the demand was outstanding since the assessee had filed an appeal before Income Tax Appellate Tribunal. On being asked as to what action was taken by the department against the erring officers it was stated that the officer who had completed the assessment had since retired. Moreover, as the mistake had been considered bonafide no action was contemplated.

XIII. Wealth of trust escaping assessment

86. Property held under trust or other legal obligation for any public purpose of charitable or religious nature in India is exempt from levy of Wealth tax. The exemption is, however, not available if the trust forfeits exemption under the Income Tax Act *inter alia* for the following reasons:

(i) Any part of income or property of the trust has been applied for the benefit of the author, or the manager of the trust, any trustee or any of their specified relatives.

(ii) Trust funds have been invested in modes not prescribed under the provisions of the Act.

87. In such cases, Wealth tax is chargeable at the maximum marginal rate without excluding the value of any asset exempted under Wealth Tax Act.

88. In the case of 62 assessee (Andhra Pradesh, Delhi, Gujarat, Karnataka, Maharashtra, Punjab, Tamil Nadu and West Bengal charges), it was noticed by Audit that exemption of income from the property held under trust for income tax purposes was not available for income tax purpose for one or more of the reasons stated above and as such the properties in question constituted the wealth of the assesses, eligible to Wealth tax. Except in the case of 20 assesses, no return of wealth had been filed nor was any notice calling for the wealth tax return issued by the department. In the cases in which wealth tax returns were filed, erroneous deduction on account of exemption of certain assets was noticed with consequent non-levy of tax at the maximum marginal rates. The mistakes resulted in non-levy of wealth tax amounting to Rs. 102.14 lakhs in 188 assessments.

89. When asked, in this context the Ministry informed the Committee that objections had been accepted only in five cases and remedial action had also been initiated. They were also informed that although Audit objection of non levy of wealth tax had not been accepted in the remaining 42 cases, remedial action was being initiated as a precautionary measure wherever possible. Instructions had also been issued from time to time for ensuring coordinated assessment under the direct taxes.

XVI. Concessions/Exemptions

90. Under Sections 10 to 13 & 80(G) of Income-tax Act, 1961 various concessions have been granted to religious and charitable trusts subject to fulfilment of certain conditions. The objectives behind extending these concessions are to reorganise and enlarge the contribution of these trusts in supplementing the work of the Government of a Welfare State by catering to the educational medical socio-economic and religious needs of the people in the country. As demand on the Government financial resources are many, it was felt that the participation of religious and charitable institutions in sharing the burden of Government in providing 'Welfare State' be encouraged, enlarged by extending fiscal concessions to them under Income Tax, Wealth Tax and Gift Tax Act etc.

91. As the concessions extended to such trusts involved large tax implications, the Committee enquired as to how the fulfilment of conditions are watched by the Department to ensure that there is no abuse of these concessions particularly, in view of the fact that majority of assessments are completed in a summary manner.

92. The Committee desired to know whether any evaluation about the achievement of the objectives sought to be fulfilled by the grant of these concessions have been made. In a note furnished to the Committee Ministry have stated:

> "No evaluation about the achievement of objectives sought to be fulfilled by the grant of concessions has been made in the recent past."

93. During evidence the Committee enquired the rationale for allowing these concessions without knowing either the extent of benefits given or whether the concessions have helped in the achievement of stated objectives. The Committee also desired to know whether the Ministry are considering to take up such evaluation in near future. The representative of the Board stated:

> "We have not employed any outside agency to make any evaluation. We have been making periodical evaluation. We have our own directorates like the Directorate of of Special Investigation, the Directorate of Management Services and occasionally we ask them to go into certain aspects of the functioning of these institutions. This has been very sparingly done........ we felt that we had reached a stage, at a time, where we have to re-examine the whole issue. It requires a reappraisal...."

94. He further added:

> "There has been no clear cut evaluation study of Charitable trust systemetic evaluation as it is, is normally done by the examining trust in random manner. Have their objection been fulfilled; if so, to what extent? How much money have they received? How they

have applied with systematic evaluation study which we normally come across has not been done during past 10 years. The fact of the matter is no proper systematic evaluation of these institutions has been done. It has to be done and it requires to be done."

95. The State has always recognised and sought to encourage the laudable role of private philanthrophy in relieving distress and in helping to meet the socio economic cultural and religious needs of the society. Such an encouragement has been a feature of the Indian taxation system. Sections 11 to 13 of the Income Tax Act, 1961 deal with exemptions available to income of trusts and institutions created for charitable or religious purposes, subject to fulfilment of certain conditions. Wealth tax is also not charged on property held under trust or other legal obligations for public purposes of a religious and charitable nature. Donors are given relief from income tax and gift tax in respect of donation paid to institution established in India for charitable purposes. The Committee have during the examination of the Audit Review noticed a number of inadequacies in the system as well as deficiencies in the existing law and its applicability which have been brought out in the succeeding paragraphs.

96. The Income of an institution, trust or fund created for charitable or religious purposes can be exempted under Section 10(23)(c) (iv) and (v) or Section 11 of the Income Tax Act. Although some of the conditions for grant of tax exemption under both these sections are common, yet, under the provisions sub section 4-A of Section 139, the filing of returns by assesses under section 11 has been made mandatory if the total income without taking into account the provisions of this section is taxable. At the same time, in the case of assesses exempted under section 10(23)(c) (iv) and (v) filing of returns has not been made necessary as the income does not form part of the total income. According to the Ministry of Finance (Department of Revenue), the reasons for granting exemption to religious and charitable trusts under two different sections of Income Tax Act are to do away with the requirement of filling of an annual return and to impose any time limit for accumulation of funds in the case of those trusts which are of national and statewise importance. In this context, the Public Accounts Committee in their 144th Report (1982-83) 7th Lok Sabha had expressed the view that grant of exemption under Section 10(23)(c) (iv) and (v) freed the grantee institutions from all legislative, judicial and administrative control of Income Tax Law. The Committee had, therefore, recommended that this section should be scrapped altogether from the statute book. According to Ministry of Finance, on the recommendations of the Economic and Administrative Reforms Committee (Jha Committee) to whom the matter was referred and on the basis of recommendations of PAC, clause (iv) and (v) of Section 23 were amended by the Direct Tax Laws (Amendment Act, 1989) with effect from 1st April, 1990 to provide for conditional

notifications issued by the Central Government under which a trust or institution is granted exemption for maximum period of three assessment years.

97. While the Committee note that in pursuance of their earlier recommendation, an amendment has been made in the Act according to which a conditional notification is now issued to keep a further check on the misuse of the utilisation of funds by trusts, they are still not fully satisfied with the efficacy of the present system. In view of the very fact that at the time of grant of renewal of such trusts, total reliance is placed on the information supplied by the respective tursts in the prescribed form and no detailed scrutiny is exercised, the Committee feel that it may not be possible for the assessing authorities to ensure whether all the conditionlities of law have been fulfilled or whether the renewal at all is justified. The Committee, therefore, desire that the Ministry of Finance should re-examine the desirability of retaining both the sections simultaneously in the Act in order to ensure effective monitoring of the cases. The Committee would like to be apprised of the final outcome of such a review together with the decision taken in this regard.

98. The Income Tax Act provides a separate exemption under Section 10(23-A) for specified income of an association or institution established in India for encouragement of the profession of law, medicine, engineering and accountacny etc. The Committee have found during the course of their examination that inspite of having a specific provision for such professional bodies, Government have been allowing general exemptions under Section 10(23) (c) (iv) to such bodies with the result that certain additional exemption by way of income from house properties, dividends and interest etc. is also granted to these institutions/associations. According to the Ministry of Finance, there is no prohibition in granting exemption under Section 10(23) (c) (iv) to the professional bodies which are Covered by Section 10(23A) so long as these bodies fulfill conditions of Section 10(23) (c) (iv). The Ministry of Law had earlier opined that the provisions of Section 10(23A) would prevail over that of Section 10(23) (c) (iv) however, in their latest opinion the Ministry have observed that the mere fact that an institution is governed by Section 10(23A) may not take away from it exemption afforded under Section 10(23) (c) (iv). The Committee have noticed that a lot of flexibility exists in law so far as the interpretation and applicability of provisions of Section 10(23A) and 10(23) (c) (iv) are concerned with regard to the exemptions which are being granted to professional institutions/associations. Whereas some professional bodies are covered under the provisions of Section 10(23)(c) (iv) others continue to remain under Section 10 (23A) resulting in total lack of uniformity. They are surprised to note divergent views expressed by the Ministry of Law on two different occasions with regard to the interpretation of these Sections. The matter is reported to have been once again referred to the Ministry of Law for eliciting fresh opinion. Keeping in view the huge revenue

implications the Committee desire that the whole issue should be reappraised and the opinion of the Attorney General should be solicited with a view to having an authoritative opinion in the matter. The Committee would like to be appraised about the final decision taken in this regard.

99. Every person on receipt of income dervied from the property held under trust set up wholly for religious and charitable purposes is required to furnish a return of such income under Income Tax Act if the total income, without giving effect to the provisions of Section 11 and 12 exceeds the maximum of the amount which is not chargeable to income tax. The Committee, however, note that Section 10(22) of the Income Tax Act allows exemption to any income of a University or other educational institutions existing solely for educational purposes and not for the purposes of profit. Similarly under Section 10(22A) any income of a hospital or other institution is exempted if it has been established for the reception, treatment, convalescence or rehabilitation of persons requiring medical attention and which is existing solely for philanthropic purposes and not for profit. There is however no requirement under the law for the institutions referred to in Section 10(22) and 10(22A) to file return voluntarily resulting thereby in the possibility of evasion of tax by a large number of such institutions. The case of Madras Medical Mission cited in the Review conducted by Audit is only one small case. According to the Ministry of Finance's own admission, there are a very large number of hospitals, trusts, convalescence homes and organisations offering medical treatment which *prima facie* enjoy benefits of Section 10(22A). Besides, though under some exiting provisions in the Income Tax Act, action can be taken against such institutions/organisations but in Committee's view, in the absence of statutory requirement for filling of income tax return, the identification of the organisations which choose not to file the return leaves a big question mark. The representative of the Board was can did in admitting that the only area where they are not in a position to systematically evaluate the performance of the trusts is the educational institutions and hospitals under Section 10(22) and 10(22A). The Secretary, Revenue also conceded that in view of the large number of institutions coming forward for exemptions, the matter did require a second look. The Committee are of the firm view that taking into account the very fact that there are a large number of institutions/hospitals/organisations which often seek exemption under the provisions of Section 10(22) and 10(22A), there is an urgent need to ensure that the income that they earn is used strictly in accordiance with the objectives for which these have been set up. Under no circumstances they should be allowed to enjoy the benefits of exemption, in case they are working purely on commercial lines with the main motive of making profits. This in the view of the Committee can only be ensured if the income earned by such institutions passes through the strict scrutiny of the Income Tax Department. They therefore, desire the Ministry of Finance to seriously

consider bringing the institutions mentioned under Section 10(22) and 10(22A) under the scrutiny and control of the department as is exercised in the case of those covered under the provisions of Section 11 of the Income Tax Act.

100. From the statistical information furnished to the Committee they are also surprised to note that in some of the charges the number of returns filed by the trusts were more than the actual number of trusts registered. CBDT was also not able to explain the reasons for such variations. There was also no system to check if the defunct trusts which had assessable income chose not to file the income tax returns. In some of the cases test checked by Aduit it was revealed that some of the trusts did not file the returns even though they had assessable income. It was also found that even unregistered trusts were filing their returns and yet enjoying exemptions under the provisions of act. Also no comprehensive list was being maintained of all those institutions which enjoy exemptions under Section 10(22) and 10(22A). The Committee fail to understand as to how in the absence of the complete information available regarding the functioning of both registered and unregistered trusts, CBDT was able to assess the income of trusts correctly. They are of the considered view that this is an area which requires urgent attention. They also desire that some foolproof system needs to be evolved to ensure that all the trusts which have assessable income file their returns regularly and defaulting trusts are suitably penalised under the different provisions already existing in Act.

101. The Committee find that assessment of trusts done earlier as scrutiny cases under Section 143(3) of Income Tax Act have been brought under the purview of summary assessment scheme w.e.f. April 1988. Bulk of assessment of religious and charitable trusts are now completed in a summary manner without independently applying the statutory conditions prescribed under Section 11 to 13 of the Income Tax Act. Under the specific provisions of Section 143(1) *prima facie* allowance of disallowance can be made just on the basis of information available in the return or accompanying documents. No reference to past record is permissible to make such adjustments. According to the Ministry of Finance, the changeover to new system was necessitated due to increasing volume of work, manpower constraints and to pay more attention to bigger cases of trusts. Besides all trust having income of more than Rs. 50,000 before giving effect to the provisions of Sections 11 and 12 are also required to file audited Report in Form 10-13. This coupled with detailed information contained in various columns of Form 3A acts as sufficient safeguards to prevent abuse of concessions and to ensure that all conditions have been fulfilled by charitable trusts for being given benefits under Section 11 even where assessments are completed in a summary manner under Section 143(1)(a). Besides, specific guidelines have been formulated for selection of trust cases for compulsory scrutiny apart from 5% of the cases which are randomly taken up for scrutiny. Instructions have also been issued by

Chairman, CBDT in 1989 which have again been reiterated by the Board in 1991 to the effect that the returns should expeditiously and invariably be linked with assessment records after they are processed under Section 143(1)(a) of the Income Tax Act.

102. The Committee however are not convinced with the justification advanced by the Ministry of Finance for switching over to the new system. In their view, the new procedure of assessments under which all the returns are initially processed under Section 143(1)(a) of the Income Tax Act for *prima facie* adjustmens if any merely on the basis of returns/accompanying documents and only a very small percentage of cases are selected for detailed scrutiny cannot be as effective as the earlier procedure under which under Section 143(3) all the cases had to pass through strict scrutiny assessments. Besides, keeping in view the very fact that cases processed under Section 143(1)(a) are also opened very sparingly for scrutiny, the possibility of evading the tax liabilities by a large number of trusts cannot be ruled out. The Committee also take a serious note of the fact that only 5% of the cases are selected on random basis for compulsory scrutiny and the guidelines for compulsory scrutiny under some sections relating to trusts have also been issued only recently. Having taken into account the very fact that large revenue effects in assessment of religious and charitable trusts are involved, the Committee desire that not only the guidelines issued by Department in this regard should be followed scrupulously but the percentage of the cases of which are selected on random basis should also be suitably augmented so as to circumvent the trusts from evading to pay their legitimate dues to the Government. They are also of the opinion that in order to ensure that tax concessions are not abused it is but necessary that information contained in the records which are filed before the assessing authorities are necessarily verified with reference to the past records. The Committee desire that not only instructions issued by the Board in this regard need to be followed in letter and spirit but review should also be undertaken in order to assess whether such instructions are also being followed by the assessing officers while deciding cases under Section 143 (1)(a). The Committee would like to be apprised of the outcome of such a review.

103. Donations specifically made towards the corpus of the trusts created for charitable and religious purposes are not included in the total income of the trust for levying tax. Donor is also exempted from tax payment. The inherent intention in granting such exemption is that the amount received towards donations to corpus funds should be utilised for charitable and religious purposes. However the Committee note that under the Act, no time limit has been prescribed for utilization of such funds with the result that though both donors and donees trust enjoy tax exemptions, there is a possibility that the donated fund may not be spent on avowed objectives and remain unutilized indefinitely. Besides in the event of a trust subsequently becoming defunct the amount would escape tax liabilities. As an illustration,

Audit in their review have brought out the case of a trust in UP charge which was created on 31st March, 1978 with an initial donation of Rs. 45,000 with the object of constructing a hospital to give free medical relief to the general public, however, despite the fact that the trust continued to receive contributions, the hospital was not completed till the end of the previous year relevant to the assessment of year 1983-84. The entire balance of Rs. 82,670 as on 31.3.83 was lying unspent. While defining the defunct trusts as those which are set up with a particular objective but are not able to garner donations to carry on with their objectives, the representative of Board informed that on the request being made by a trust a maximum period of 10 years is granted to such trusts to accumulate their income. The Committee however, note that there is no mechanism which exists in the department to inspect the functioning of trust at every stage with a view to ensuring that the income earned is utilized strictly in accordance with the objective for which these trusts are established. It is only during the process of searches and surveys conducted by intelligence agencies that the cases of defaulting trusts come to their notice and taxes are levied. The Committee are of the view that a period of 10 years for allowing accumulation of income from Corpus by these trusts is on the higher side and the desirability of reducing this period further needs to be considered, so that during the scrutiny of assessments, all those trusts which fail to utilize the income from the corpus funds towards the avowed objectives could be brought within the purview of tax liabilities. Besides some suitable mechanism should also be evolved to bring such voluntary donations within the ambit of taxation which are received off the record in the form of jewellary or cash etc. and for which no account is maintained. The Committee are of the view that since the trusts stand to benefit by such donations, these should not be allowed to easily get away from the penalties.

104. Under Section 12 of the Income Tax Act, any voluntary contribution received by a Trust created wholly for charitable or religious purposes shall be deemed to be income derived from the property held by the Trust if such contribution has not been made with a specific direction that the same shall form the corpus of the Trust. Donations towards earmarked funds such as building fund, scholarship fund etc. cannot be taken to be made towards the corpus fund but are merely to be treated as appropriation of income for a specific purpose and are therefore, to be included in the total income. The Committee's examination, however, revealed a number of cases in different charges where the exclusion from total income of donations to earmarked funds or voluntary contributions/grants without specific direction of the donors to treat them as corpus funds resulted in non assessment of income amounting to a substantial amount. Out of 15 cases of assessee trusts pointed out by Audit in which such irregularities had been committed, the Ministry of Finance accepted four cases involving a revenue effect to the tune of Rs. 2.47 lakhs in three cases alone. In one case, relating to Assam, the correct amount of tax revenue could not be ascertained since the

reassessment proceedings were reported to be in progress. Though the remedial action in the other three cases was reported to have been initiated by reopening the assessments the Committee are not happy over the tardy progress made in finalisation of such cases. They also deplore the callous attitude of the assessing authorities which resulted in such wrong assessments and the consequential loss of revenue. The Committee would expect the officers to be more careful and vigilant in future and also desire that the pending action in respect of all the cases should be completed expeditiously and the total tax effect involved in all the cases should also be intimated to the Committee.

105. With a view to preventing abuse in the application and investment of trust funds there are stringent provisions in the Income Tax Act under which entire income of the trust becomes liable to tax if a part or whole of the income or property is directly or indirectly applied or used for the benefit of a certain category of persons such as author/founder of the trust/ institution, any trustee or manager or substantial contributors, or any specified relative of the afore mentioned persons. The benefit is also not available if the benefit is restricted to any particular religious community or caste or the employee or member of a trust/institution or a substantial donor. Test check conducted by Audit of assessment records for the assessment years 1981-82 to 1990-91 alone revealed cases of 11 such assessees, trusts, whose properties were used for the benefit of prohibited category of persons or their relatives or were restricted to a particular religious community or caste. This resulted in non-assessment of income of Rs. 70.11 lakhs together with revenue loss to the tune of Rs. 34.11 lakhs. Out of these, the Ministry of Finance accepted only four cases involving a total tax effect of Rs. 21.15 lakhs. Whereas remedial action in respect of 2 cases was reported to have been completed, reassessment proceedings under section 147 in other two cases was reported to have been initiated. The Committee however take a serious note of the fact that despite stringent provisions existing in the law, exemptions have illegally been granted to the trusts which in turn has resulted in causing substantial revenue loss to the Government. What further irks the Committee is the very fact that no effort has been made by CBDT to maintain charge wise information of such illegal exemptions which have been granted during the past several years. The Committee, therefore do not understand as to how in the absence of such a vital information, monitoring and correct assessment of income tax involved in a large number of assessments is possible. What further dismay the Committee is the fact that even remedial action is also not taken promptly by the department in such cases which in itself reflects poorly on the working of the officials of the department. They are not at all happy over the slow progress made so far in disposal of pending cases and desire that earnest efforts must be made to expeditiously complete not only the reassessment proceedings which are reported to be pending but also those cases where action under section 147 has been initiated.

106. One of the conditions for seeking exemption of income of trusts i that a trust or the institution is required to get itself registered unde Section 12A of the Income Tax Act, 1961 before the expiry of a period o one year from the date of creation of the trust/institution. However, b Finance (No. 2) Act, 1991, this condition has further been relaxed and th application can now be made even afer the expiry of a period of one year The delay can be condoned by the Chief Commissioner or Commssioner o Income Tax, provided he is satisfied for such delay on reasonable grounds In such cases, the exemption will be available from the date of creation o the trust or institution. In case the delay is not condoned the exemption i available from the first day of the financial year in which the application i made. Test check conducted by audit revealed that in the case of nin assessees, the assessments were completed and exemption in income tax ha been allowed even when trust had either not been registered with th Income Tax Department or their applications for registration were pendin or they were granted exemption from a date later than that applied for Such irregular exemption granted to trusts resulted in underassessment o income of Rs. 71.77 lakhs with tax effect o Rs. 42.20 lakhs. As an illustrative case audit pointed out the case of a trus in Gujarat, where the trust was created on 22 March, 1981 but it applie for registration only on 17 October, 1990 i.e. after a lapse of more tha eight years. Yet the registration was granted by the Commissioner o Income Tax w.e.f. the date of filing of application. Thus the assessee trus which was not eligible for exemption of income for the assessment yea 1989-90 was granted incorrect exemption resulting into non levy of ta amounting to Rs. 1016 lakhs. Out of 12 cases reported by the audit, th Ministry accepted irregularities in six cases and out of these in the one cas it was revealed that the registration was granted even after a period of thre years.

107. The Committee take a serious note of the fact that in correct gran of exemption granted in the past to the religious and charitable trusts ha resulted in under assessment of income and non levy of tax involving hug amounts. They find that when under Section 12A it is a pre-requisite that a trust must get itself registered before filing the claim of exemption, some o the trusts have been granted exemption even when these had either no come forward for registration at all or their applications for the same wer pending. They also note that under the Income Tax Act there is no tim prescribed under which the grant of registration is to be accorded by th Chief Commissioner/Commissioner of Income Tax as a result of which th applications remain pending for years together. They are not convinced wit the defence advanced by the Ministry of Finance in this regard, unde which the delay in disposal of application is stated to be on account o incomplete application, time taken for verification of supporting documents modifications to be carried out in trust, deeds and work pressure in th office of the Commissioner of Income Tax. The way exemptions have bee

granted in the past by the Department without ascertaining the legal status of the trusts makes the Committee feel that there is certainly something amiss in the working of the department which drastically needs to be streamlined. Therefore, they also desire that application seeking registration for trusts must be disposed of expeditiously. They see no reason as to why legal provisions to this effect cannot be incorporated in the Act itself specifying time limit for disposal of such applications when a period already stands prescribed in the Act for making the application for registration by the trust. They, further desire that a serious thought needs to be given by CBDT in this regard. All cases where exemptions have been granted wrongly/illegally need to be probed further with a view to fixing responsibility. The Committee would also like to be intimated in this regard.

108. Under Section 11(1) (a) of the Income Tax Act, income derived from property held under trust wholly for charitable or religious purposes is exempt from tax liabilities to the extent such income is applied for the objective of the trust during the year or accumulated and set apart for such purposes so long as it does not exceed 25% of its income. If a trust is unable to apply 75% of its income during the year and wishes to accumulate more than 25% of its income for future utilisation and seeks tax exemption for the current year, the trust has to file Form 10 in which it has to state the purpose and the period of accumulation (which in no case should exceed 10 years). The money so set apart is required to be invested in prescribed modes such as Central and State Government Securities, Scheduled Bank deposits etc. In case, the money so accumulated is not applied for the specified purpose within the prescribed period or ceases to remain invested in prescribed modes, then such income is deemed to be the income of the trust or institution in the previous year in which the default occurs or the year immediately following the expiry of the prescribed period. The Committee find from the test review conducted by Audit that in the case of 66 Trusts, either prescribed procedure for the accumulation of more than 25% of the total income for prescribed period and purposes was not followed or the accumulated income was not utilised for the purposes specified within the prescribed time limit. This resulted in under charge of tax amounting to Rs. 191.98 lakhs in 1978 assessments. The Ministry of Finance accepted the mistakes for having allotted accumulations under Section 11(2) in eight cases involving a total amount of Rs. 10.06 lakhs and remedial action was reported to have been taken. The Committee were also informed that in respect of other cases where the Audit objections had not been accepted, the remedial action was being taken as a precautionary measure. The Committee, however, note that no penalty had been provided under the Act in case trusts violated the above mentioned provisions except to tax the trusts in the year in which default occurs. According to the Ministry of Finance this itself was considered to be an adquate compensation for breach of conditions. The Committee are however of the considered view that this could not be considered as a sufficient deterrent

and stringent measure to check such malpractices. They desire that suitable provisions therefore, be incorporated in the Act so that offenders are not able to evade the payment of tax easily. They desire the Ministry of Finance to examine the incorporation of such a provision and apprise the Committee in this regard in due course of time.

109. Under the provisions specified in Section 11(5) of the Income Tax Act the incomes sought to be accumulated have to be invested or deposited by the religious or charitable trusts in the prescribed modes and the tax becomes leviable at the maximum marginal rates in case such funds are invested or deposited in any mode other than those specified. Under the Act the specified modes are Government saving Certificates, deposit in Post Office, saving banks, deposits with any scheduled/Cooperative Bank, investments in Central or State Government securities, units of UTI, debentures guaranteed by the Central/State Government, deposit with any public sector company, Industrial Development Bank etc. Audit has brought out in the review cases of nine such assessee trusts where illegal exemptions were granted in clear violation of these stipulated provisions under the Income Tax Act. This resulted in under assessment of total income amounting to Rs. 52.57 lakhs and none levy of income tax of Rs. 37.76 lakhs. In the case of trust assessed in Gujarat charge alone income was not assessed despite the fact that the trust was not eligible for exemption which consequently resulted in non levy of income tax aggregating to Rs. 23.43 lakhs and wealth tax of Rs. 5.48 lakhs. Likewise, exemption from the levy of tax in respect of income by way of profits and gains of business of a trust is available w.e.f. assessment year 1984-85 (and prior to April 1, 1992) only if the work is carried on by the beneficiaries of the trust/institution wholly for charitable purposes or if the business consists of printing and publication of books or a kind notified by the Central Government which is carried on by a trust wholly for public religious purposes. In both the cases the trust or institution is required to maintain separate books of accounts for such business. According to Audit in the case of four assessee trusts, the assessed income by way of profits and gains was not brought to tax, despite the fact that the business was not of permitted kind and was not being carried on by the beneficiaries of the trusts. Separate books of accounts were also not being maintained in such cases. The ommission to bring to tax, the business income in eight assessments for the assessment years 1984-85 to 1990-91 lead to under assessment of income of Rs. 31.58 lakhs with tax effect of Rs. 17.40 lakhs. Though the Committee have not gone into the details of the cases mentioned above they desire that remedial action in all cases mentioned above should be taken up immediately and all necessary steps should also be taken to ensure that such a mistakes do not occur in future.

110. Under the Gift Tax Act, 1958 donation made by any person to any charitable institution or fund which is not exempted under the provisions of Income Tax Act are liable to gift tax. Audit in their review have pointed out

a case in Tamil Nadu charge where a sum of Rs. 4 lakhs was received by a Trust towards its corpus during the previous years relevant to the assessment year 1985-86. This contribution, however, was not used for any chartiable purposes but against setting off losses of the earlier years. The contributions were, therefore, not exempted under the provisions of Income Tax Act and the amount should have been treated as gift and charged to Gift Tax. The omission to do so resulted in non-levying of Gift Tax of Rs. 80,250/- for the assessment year 1985-86. According to the Ministry of Finance, in the instant case since the assessee had filed an appeal before the Income Tax Appellate Tribunal the amount was still outstanding. Action by the Department against the concerned Officer who had completed the assessment also was not taken since he had retired and the mistake had been considered to be bonafide. The Committee however, take a serious view of such blatant mistakes which are committed by the assessing officers while granting tax exemption without scrupulously following the provisions stipulated in the Act and without exercising a detailed scrutiny of the cases. They are also anguished to note the way such officers are allowed to escape their responsibilities under the defensive cover of their seniors. They are of the firm opinion that no law can be effective if it is not implemented earnestly. The Committee, therefore, desire that as and when such cases of illegal and irregular exemptions come to the notice of the Department, suitable punitive action should invariably be taken expeditiously against the officers so as to inculcate a sense of responsibility and discipline among all and to save consequential loss to the exchequer.

111. Property held under trust or other legal obligations for any charitable or religious purposes for the benefit of general public is also exempted from levy of wealth tax. However, no exemption is available under Wealth Tax Act if the trust forfeits exemption under Income Tax Act for any infringement of its provisions. Audit in their test checks conducted have pointed out cases of 62 assessees under different charges where exemption of income from properties of trusts was not available and the properties in question should have been taxed for wealth tax. However, surprisingly in most of the cases as brought out by audit neither any return of wealth tax had been filed nor any notice was issued by the department for filing such return. Besides even in cases in which the wealth tax returns were filed erroneous deductions on account of exemption of certain assets was noticed with consequential non levy of tax at the maximum marginal rates. Such mistakes according to the Audit Review resulted in non levy of wealth tax amounting to Rs. 102.14 lakhs in 188 assessments completed for the assessment years ranging from 1981-82 to 1991-92. The Ministry of Finance accepted irregularities only in five cases, and remedial action in other cases was reported to have been initiated as a precautionary measure. The Committee cannot but express their serious concern over the irregularities which have been committed. Though they have been informed that instructions have been issued from time to time for effecting proper

correlation between the income tax, wealth tax and gift tax records relating to the assessees and coordination between the assessing officers, the Committee are not satisfied with the results achieved in view of the fact that there have been a number of instances of wrong assessments. The Committee desire that earnest efforts should be made to ensure that instructions are followed scrupulously. A periodical review should also be undertaken by the department in order to ensure that there is no laxity in so far as the implementation of the instructions are concerned. They also desire that action in respect of the cases which are under review should be completed expeditiously.

112. The Committee's examination of the cases where the exemption have been allowed to religious and charitable trusts reveals that various concessions are allowed to trusts in recognition to the contributions made by them towards social objectives. Surprisingly, no effort has been made to monitor whether the trusts have been fulfilling the objectives under which they have been established and also for ensuring that there is no abuse of the concessions which are enjoyed by such trusts. The Committee also note that the Ministry have been asking their Directorate of Special Investigation and Directorate of Management Services to go into certain aspects of the working of these institutions very occasionally. The representatives of the Board also conceded during evidence that though evaluation has been done by examining trusts in a random manner, but no proper systematic evaluation study has been undertaken during the last ten years. However, they accepted the fact that there was a need to undertake such a study. In the absence of existence of any effective system evolved for scrutinising the functioning of a large number of trusts the Committee are not able to appreciate the rationale for allowing exemptions to these trusts, more so when the amount of revenue involved in such exemption is substantial and when the primary object behind grant of such exemption is to enlarge the contributions made by these trusts in supplementing the work of the welfare state by catering to the educational, medical, socio-economic and religious needs of the people in the country. In the light of the deficiencies/shortcomings observed in the foregoing paragraphs, the Committee desire that the Ministry should seriously ponder and look into the whole issue afresh with a view to devising a procedure for proper and systematice evaluation of religious and charitable trusts so that those trusts which are not discharging their functions in consonance with the objectives under which they have been established do not escape any tax liability.

NEW DELHI;
25 April, 1995
5 Vaisakha, 1917 (Saka)

BHAGWAN SHANKAR RAWAT,
Chairman,
Public Accounts Committee.

APPENDIX I

Para 2.02 of the Report of the C&AG of India for the year ended 31 March 1992 No.5 of 1993, Union Govt.

(Revenue Receipts—Direct Taxes) relating to Review on assessment of religious and Charitable trusts.

Introductory

2.02.1 The State has always recognised and sought to encourage the laudable role of private philanthropy in relieving distress and in helping to meet the socio-economic, cultural and religious needs of the society. Such an encouragement has been a feature of the Indian taxation system. Income of trusts and institutions created for charitable or religious purposes, when derived from property held under trust or received through donations to the corpus of the trust, and applied for such charitable and religious purposes, is exempt from income tax subject to certrain conditions. Wealth tax is also not charged on property held under trust or other legal obligations for public purposes of a religious and charitable nature. Donors are given relief from income tax and gift tax in respect of donations paid to institutions established in India for charitable purposes.

Law and Procedure

2.02.2(1) The Income Tax Act does not define a religious and charitable trust. However the Indian Trust Act defines a trust as an obligation annexed to the ownership of the property and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner, (Section 3). The person who reposes or declares the confidence is called the author of the trust, the person who accepts the confidence is called the trustee, and the person for whose benefit the confidence is accepted is called the beneficiary. The subject matter of the trust is called trust property.

The essentials of a valid trust are as follows:

(i) It must be created for a lawful purpose. The purpose is lawful unless (a) it is forbidden by law, or (b) it is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) it is fradulent, or (d) it involves or implies injury to the person or property of another or (e) the court regards it as immoral or opposed to public policy.

(ii) If it relates to immovable property, it must be declared by a non-testamentary instrument in writing, signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the

1. Sec. 4 of India Trust Act, 1882.

trustee. If it relates to movable property it must be declared as in the case of immovable property or alternatively, the ownership of the property must be transferred to the trustee (in which case a written declaration is not necessary).[2]

(iii) The author or the trust must indicate with reasonable certainty by any words or acts,

(a) an intention on his part to create thereby a trust;

(b) the purpose of the trust,

(c) the beneficiary and

(d) the trust property[3].

(iv) Unless the trust is declared by will or the author of the trust is himself to be the trustee, the trust property must be transferred to the trustee[4].

(v) The subject matter of a trust must be property transferable to the beneficiary and not merely a beneficial interest under a subsisting trust[5].

(vi) The author of a trust, the trustee and the beneficiary must all be competent persons A trust may be created by any person competent to contract. Section 11 of the Contract Act provides that every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject. A competent trustee is one who is capable of holding property, but where the trust involves the exercise of discretion, he will not be entitled to execute it unless he is competent to contract. The beneficiary may be any person capable of holding property. He may be minor or an alien. A trustee may also be a beneficiary but he cannot be the sole beneficiary, since no trust can exist where the entire property is vested in one person and rights and duties are exercised by one person.

2.02.3 The Income Tax Act gives an inclusive definition of the term 'charitable purpose' classifying it under four heads, viz., 'relief of the poor' education, medical relief and the advancement of any other object of general public utility. The first head 'relief of the poor' has always been recognised as a charitable purpose. However, if under a trust created or established after 1st April 1962, a relative obtains any benefit even by way of preference, the trust would be regarded as non-charitable and the whole income of the trust would be includible in the total income [S.13(1) (c)]. Examples of the second head 'education' are establishing schools where

2. Sec. 5 *ibid.*
3. Section 6 of Indian Trust Act 1882
4. Section 8 *ibid*
5. Section 7,9 and 10 *ibid*

free education is imparted, establishing professional chairs, lectureships, scholarships, fellowships and readership and grants in respect of research, academic rewards, extending financial assistance to poor and deserving students by way of loans, scholarships, grant for purpose of books etc. As regards the third head 'medical relief', this should be by way of bounty and not by way of bargain. The fact that some of the beneficiaries pay for the benefits they get from a medical institute would not be fatal to charitable character of the institution. The fourth head comprises all objects of general public utility which will include all purposes which are useful or beneficial to the general public. It would exclude the object of private gain. The question whether a particular object is of general utility or not is to be tested, not by the views and the considerations of the founder or the author of the trust, but by the principles applicable to such cases in a court of law and by finding out whether a court would regard the trust as a charity, applying the standard of customary law and the opinion common amongst the community to which the parties belong.

2.02.4 Religious purposes must be determined by the personal law of the parties and would include the advancement, support or propagation of a religion and its tenets. The exemption granted under the Act is confined to public religious trusts and does not extend to private religious trusts which do not enure for the public benefit[6].

2.02.5 Thus, a valid trust for charitable or religious purposes would involve having the public as the beneficiary and the specification of objects on which or for which income from the property is to be spent or applied, besides specification of the property and the dedication of property. The Supreme Court has, in a recent decision[7], held as follows:

> "The crux of the statutory exemption under section 11(1) (a) of the Act is not the income earned from property held under trust but the actual application of the said income for religious and charitable purposes. It is, therefore, necessary to indicate in the trust deed the broad objectives for which the income derived from the property is to be utilised."

Sections 11 and 13 of the Income Tax Act, 1961 deal with exemptions available to income held for charitable or religious purposes on fulfilment of certain conditions regarding application, setting apart and investment of such income. Donations to such trusts are partially exempt in the hands of the donors from the levy of income tax and fully exempt from the levy of gift tax under Gift Tax Act, 1958. No wealth tax is leviable under Wealth tax Act 1957 on the wealth of the trusts which enjoy income tax exemption.

6. Official Trustees Vs. CIT, 67-ITR-218
7. Gangabai Charities Vs. CIT 196-ITR-30(ST)(SC)

Besides exemption under Section 11, the Central Government has statutorily and absolutely exempted under various sub-sections of Section 10 some specific trusts, associations or institution as also certain types of income having regard to their objects and importance. Section 10, unlike section 11, does not contemplate that income should be applied during the year itself. Incomes falling under Section 10 do not form part of the total income. The position is similar to incomes assessable under section 11 to 13. However, section 139 (4A) provides for mandatory filing of a return in the latter cases provided to total income without giving effect to the provisions of Sections 11 and 12 is above the maximum amount which is not chargeable to income tax. It has been judicially held that the provisions of section 10 and sections 11 to 13 are not mutually exclusive[8]. Thus, income, which are not eligible for exemption under section 10, can be considered for exemption under Sections 11 to 13, provided the conditionalities attached are observed.

Scope of Audit

2.02.6 Since concessions granted to charitable and religious institutions involve sacrifice of considerable revenue, it is essential that the tax privileges are not abused. This review is intended to evaluate as to how far the provisions of Income Tax Act, Wealth Tax Act and Gift Tax Act are being correctly applied, and whether there is any deficiency in the laws and their practice which may be taken advantage to avoid tax liability through the device of trusts.

A test check of the assessment records of 6133 public charitable and religious trusts was conducted over assessment years 1986-87 to 1990-91, to examine the grant of registration for income tax purposes, the quantum and the manner in which income has been derived, applied, accumulated and invested *vis-a-vis* the provisions of Income Tax Act, 1961, and their liability to wealth tax and gift tax if any. Errors were noticed in 232 trusts cases (either scrutiny assessments or summary assessments involving prescribed adjustments) with tax effect of Rs. 1146 lakhs, out of which selected cases are reported in the following paragraphs. However, 374 cases of summary assessments where mistakes not involving prescribed adjustemnts were noticed (tax effect Rs. 3977 lakhs) have not been included in the review.

Highlights

(i) The useful and supplementary role of private philanthropy in relieving distress and meeting economic, social, cultural and religious needs of the society has been recognised by the State in extending to charitable entities the benefit of exemption of tax on property and on income from such property held in trust. The crux of the statutory exemption is that the said income and property are actually applied or intended to be applied for public purposes of religious and charitable nature. Tax laws contain various

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8. CIT Vs. Bar Council of Maharashtra, 130-ITR-28(SC)

safeguards to prevent abuse of the concessions and to secure the application of income and property for the declared objectives of the trust.

(ii) Exemption is allowed to an institution, trust or fund created for charitable or religious purposes. This exemption is available under Section 10 and Section 11 of the Income Tax Act. However, whereas Section 139 (4A) makes the filing of a return mandatory in case the income is above taxable limits for assessees claiming exemption under Section 11, there is no such requirement for assessees granted exemption under Section 10 and hence monitoring of such cases is difficult [Para 2.02.8(i)].

(iii) The Income Tax Act provides a separate exemption under Section 10(23A) for specified income of professional bodies engaged in the control, supervision, regulation or encouragement of professions of law, medicine, accountancy, engineering, architecture etc. It has been observed that inspite of this specific provision, the Board has been allowing a general exemption under section 10 (23) (c) (iv) granting a further benefit to certain professional associations [Para 2.02.8 (ii)].

(iv) Trust assessments, by and large, are being completed in a summary manner, accepting the returned income except for making some prescribed *prima facie* adjustments to it. Trusts can get statutory exemption of its income only on fulfilment of certain conditions, but assessments done summarily leave no scope to the assessing authorities to examine the various conditionalities. As a result, assessee trusts may abuse the exemption of income which might otherwise be taxable [Para 2.02.8 (iii)].

(v) Donations specifically made towards the corpus of trusts created for charitable or religious purposes are not included in its total income. If such trust subsequently becomes non-functional or defunct, money standing in the corpus of the trust will escape tax liability without ever being applied to religious or charitable purposes in the absence of any enabling provision under the Act. In one case that came to notice, a trust collected donations towards its corpus which stood at Rs. 0.82 lakhs as on 31st March 1983 but did not at all utilise the income derived therefrom nor carried out any activity related to the objectives of the trusts during the following years [Para 2.02.8(iv)].

(vi) Income of a hospital or other institution for treatment, convalescence or rehabilitation of persons requiring medical attention is exempt from tax if it exists solely for philanthropic purposes and not for purposes of profit. Exemption of income of a medical institution which was charging nearly 90 per cent of the patients like any other private nursing home resulted in non-levy of tax of Rs. 57.96 lakhs [Para 2.02.16].

(vii) One of the conditions for claiming exemption from tax is that the recipient of such income should make an application in the prescribed manner for registration of the trust before the expiry of one year from the date of creation of the trust. Delay in making an application, if not condoned by the competent authority, will result in grant of registration from a date later than the date of creation of the trust, that is from the first day of the financial year in which the application is made. In the cases of 9 assessees involving tax effect of Rs. 42.20 lakhs, the registrations were granted from dates later than the dates of creation of the trusts or not granted at all, yet incomes for the period prior to registration were not brought to tax [Para 2.02.11].

(viii) Income from property held under trust is to be computed on accrual/due basis. If a trust is unable to apply 75 per cent of its total income to charitable or religious purposes as required, due to non-receipt of accrued income, it can opt in the prescribed manner to have it treated as deemed application of income in the year in which it is derived but not actually received. In the case of 5 trusts which did not exercise any such option, accrued income amounting to Rs. 26.79 lakhs was excluded with consequent short levy of tax of Rs. 24.94 lakhs [Para 2.02.15].

(ix) With a view to preventing abuse in the application and investment of trust funds, there are stringent provisions in the Income Tax Act which disentitle a trust for exemption if its funds are used for the benefit of interested persons' such as authors and managers of the trust or trustees or their close relatives or if its surplus funds are invested otherwise than in specified modes such as Government securities, deposits in post office or scheduled banks etc. In the case of 20 assessees, trust funds were found to have been applied for the benefit of prohibited persons' and surplus funds invested in non-prescribed modes, but the trusts were not subjected to tax despite disentitlement to exemption leading to non-levy of tax of Rs. 81.26 lakhs [Para 2.02.9&2.02.13].

(x) Voluntary contributions not made with a specific direction that they would form part of the corpus of the trust and contribution towards earmarked funds without such specific direction are includible in the total income of the trust which is required to be applied for the objectives of the trust. Any surplus income in excess of 25 per cent of the total income, which could not be applied for the objectives of the trust in a financial year, is liable to be taxed. Provisions, however, exist in the Income Tax Act which permit the accumulation of such surplus income for specified purposes and for specified periods not exceeding 10 years, if a proper notice is given within the prescribed time limit by the recipient of such income and such accumulated income is spent on the specified objective within that period. Cases were noticed the contributions made for earmarked funds such as building fund, scholarship funds etc., were treated as corpus funds despite the absence of direction to that effect and were excluded from the total income of the trust leading to shortfall in application of income. In a number of cases test checked, either timely notice was not given or the set apart income was not applied to the specified objectives within the time limit, but the income in question was not subjected to tax as required. Test check in audit revealed undercharge of tax of Rs. 423.03 lakhs in the cases of 81 assessees [Paras 2.02.10 & 2.02.12].

(xi) Properties held under trust or other legal obligations for any charitable or religious purposes for the benefit of general public is also exempt from levy of wealth tax. However, no exemption is available under Wealth tax Act if the trust forfeits exemption under Income Tax Act for any infringement of its provisions. In the case of 62 assessees, though the trusts had forfeited income tax exemptions for the reasons that the trust funds were applied for the benefit of interested persons' or that surplus funds were invested in non-prescribed modes, the properties held by such defaulting trusts were not brought to wealth tax. This resulted in non-levy of wealth tax of Rs. 102.14 lakhs [Para 2.02.19].

(xii) Income of a trust by way of profits and gains of business is exempted only if the work of the trust is carried on mainly by the beneficiaries for charitable purposes and the business is of an approved kind. The trust is required to maintain separate books of account for such business. The non-inclusion of the taxable business income of Rs. 31.58 lakhs in the cases of 4 assessee trusts resulted in the non-levy of tax of Rs. 17.40 lakhs [Para 2.02.14]

Detailed Review

The result of test check conducted are summarised in the following paragraphs:

General observations

2.02.8(i) The income of an institution, trust or a fund created for charitable or religious purposes can be exempted under Section 10(23) (c) (iv) and (v) or Section 11 of Income Tax Act. Some of the conditionalities in the two sections are common; but while sub-section 4A of Section 139 prescribed mandatory filing of return if the total income of the assessee exempt under Section 11 taxable without taking into account the provisions of that section, filing of return in the case of assessees exempted under section 10(23) (iv) and (v) would not be necessary since the income does not form part of the total income. In such a situation the Department would have no opportunity to examine whether the conditionalities have been observed and whether the continuance of exemption is justified.

(ii) Under the provisions of clause 23A of Section 10 of the Income Tax Act, specified income of an association or institution established in India for the control. supervision, regulation or encouragement of the profession of accountancy, law, medicines, engineering etc. as the Central Government may notify, is not to be included in computing the total income in a previous year.

Similarly any income received by a person on behalf of any fund or institution established for charitable purposes which may be notified by Central Government having regard to the objects of the funds or institution is also not liable to be included in total income under sub-clause 23 C (iv) of Section 10. Grant of exemption under the provisions of Section 10(23C) (iv) instead of under the specific provisions of sub-section 23A of Section 10 would result in non-assessment of certain income such as income from house property, income such as income from house property, income by way of interest or dividend derived from investments and income for rendering specific services. Further there is no clear uniformity in the matter. While eight professional bodies are known to have been covered under section 10(23C) (iv), some others have remained under section 10(23A).

(iii) In West Bengal charge, assessments completed during assessment years 1989-90 and 1990-91 under summary assessment scheme numbered 2513 and 4371 as against 282 and 328 done under scrutiny. The percentage of scrutiny assessment was 7.6% in the assessment year 1989-90 and 5.75% in the assessment year 1990-91. In other words, the bulk of the assessments (93 to 95 percent) was completed in a summary manner under section 143(i) of Income Tax Act. It may be stated that assessment of trusts, hitherto done as scrutiny cases under section 143(3) have been brought under the purview of Summary Assessment Scheme (without any monetary restrictions) from April 1988. Trust assessments differ from the assessment of other entitites. Statutory preconditions for application/accumulation or setting apart of income laid down under section 11 for enjoying exemption, taxability of voluntary contributions under section 12 and compliance of provisions of section 12A for registration *vis-a-vis* notification of trusts in official Gazettee for permanent exemption under certian sub-sections of section 10 as also compliance of provisions to avoid forfeiture of exemption under section 13 of Income Tax Act, are necessarily to be examined by the assessing authorities so as to ensure that the legislative intent in giving tax relief to the public trusts, are not abused. However, the department has, by and large, been processing the trust assessments in a summary manner accepting the returned income without independently applying the provisions of Sections 11,12 and 13 of the Act, to the public religious and charitable trusts or institutions. Since trusts can get immunity from taxation only on fulfilment of certain statutory conditions, assessments done under the summary scheme leave no scope for the assessing authorities to examine these aspects. Cases processed under section 143(1) were found to have been re-opened very sparingly for scrutiny.

(iv) Under the provisions of Income Tax Act, income received by a religious or charitable trust is exempt from levy of tax, if it is spent on the avowed objects of the trust. The Act further provides that donations received by the trust with specific directions that they shall form part of the corpus of the trust shall not be treated as its income for the purpose of levy of tax. Tax concessions are also available to the donors. The inherent intention of exemption/concessions in tax is that the amounts received by a trust as donation should be utilised for charitable and religious purposes in India. However, no time-limit has been prescribed in law for utilisation of funds received by way of donations for the corpus of the trust. In the absence of a time-limit. While benefits of tax concessions are enjoyed both by the donor and the donee trust, the corpus funds may remain unutilised for religious and charitable purposes indefinitely. If any of these trusts subsequently become defunct, the amount standing in the corpus of the trust will escape tax liability without ever being applied to religious or charitable purposes in the absence of any enabling provision under the Act.

In Uttar Pradesh charge, a charitable trust was created on 31st March 1978 with an initial donation of Rs. 45,000 with the object of constructing a hospital to give free medical relief to the general public. Subsequently also, it received contributions. The hospital was not constructed till the end of previous year relevant to the assessment year 1983-84. The entire balance of Rs. 82,670 as on 31st March 1983 was lying unspent.

Irregularities in the application of trust properties and income

2.02.9 Income derived from property held under trust wholly for charitable or religious purposes is exempt to the extent to which such income is applied for these purposes in India. The crux of the statutory exemption under the Act is not the income earned from property held under trust but the actual application of revenue to charitable or religious purposes.*

Under the Act, the entire income of the trust is liable to tax if part or whole of its income or property is directly or indirectly applied or used or such income enures for the benefit of a certain category of persons such as author/founder of the trust/institution, any trustee or manager or substantial contributors etc. or any specified relative of the aforesaid persons. Such use or application is deemed to have occurred if any part of income or property is lent to this category of persons without adequate security/interest or if any land or building is made available without charging adequate rent or other compensation or if any

* Gangabai Charities Vs (II, R-ST 30 (SC)

amount is paid in excess of what may reasonably be paid by way of salary, allowance or otherwise to such person or if any services are rendered without adequate remuneration or other compensation or if any funds are invested in any concern in which such a person has a substantial interest etc.

The exemption is also not available to a trust/institution created or established for charitable purposes if the benefit is restricted to any particular religious community or caste or to the employees or members of a trust/institution or substantial donor. Where the income of any year is applied to a purpose other than the charitable objects for which the trust is founded, or is spent on non permissible purposes, tax will be levied on such amounts. This is because application of the trust funds to a purpose outside the objects of the trust, though to a charitable object would constitute breach of trust.

A test check of assessment records for the assessment years ranging from 1981-82 to 1990-91 revealed that in the case of 11 assessees (A.P., Assam, Delhi, Gujarat, Kerala, Orissa, Tamil Nadu, U.P. charges), properties held under trust or trust funds were used or utilised for the benefit of prohibited category of persons or their relatives or the benefits were restricted to a particular religious community or caste. The infringement of the provisions of the Act disentitled the trust/institution from enjoying the benefit of statutory exemption from tax of their income amounting to Rs. 70.11 lakhs involving revenue of Rs. 34.11 lakhs in 20 assessments (4 of which were completed under the summary assessment scheme involving under-assessment of income of Rs. 3.87 lakhs with tax effect of Rs. 3.52 lakhs). The department accepted the audit observations in 8 cases.

An illustrative case is given below:

In Assam charge, a religious trust was constituted, for promoting religious activities in the States of Nagaland, Manipur and Meghalaya. Donations and gifts to schools etc., were not among the objects of the trust as per the deed of trust. It was observed that the trust spent Rs. 11.73 lakhs and Rs. 13.39 lakhs for religious purposes and an amount of Rs. 32.60 lakhs was given as donations and gifts for schools and other buildings during the previous years relevant to assessment years 1984-85 and 1985-86 (Rs. 14.08 lakhs and Rs. 18.52 lakhs, respectively). Donations and gifts, which were not the objects of the trust, are not eligible for exemption. Even after allowing a deduction of 50 per cent of the qualifying amount in respect of the donations (in the absence of the objects of such donations on record), the short levy of tax due to incorrect allowance of full exemption of the donations and gifts worked out to Rs. 10.03 lakhs. The objection was accepted by the department.

Voluntary contribution, not made with a specific direction towards the corpus, excluded from total income

2.02.10 Any voluntary contribution received by a charitable or religious trust, not being contribution made with a specific direction that it shall form part of its corpus, is deemed to be income of the trust. Donations towards earmarked funds such as building fund, scholarships fund etc., cannot be taken to be towards the corpus funds, but are merely appropriation of income for a specific purpose and are, therefore, includible in the total income. In case a trust intends to utilise such funds in future and seeks exemptions from tax for the current year, it is required to file form No. 10 seeking permission for exemption from being considered as income and for future application, investing such set apart funds in the prescribed modes.

In the case of 15 assessee trusts (Assam, Delhi, Maharashtra, Orissa and Rajasthan charges), the exclusion from total income of donations to earmarked funds or voluntary contributions or of grants without specific direction of the donors to treat them as corpus funds resulted in non-assessment of income amounting to Rs. 290 lakhs having tax effect of Rs. 231 lakhs in 22 assessments over the assessment years 1978-79 to 1989-90. The department accepted the audit observation in six cases.

Irregularities relating to registration of trust

2.02.11 One of the conditions for claiming exemption of income from tax is that the recipient of trust income shall make an application for registration of the trust or institution in the prescribed form (Form 10A) and manner to the Chief Commissioner or Commissioner before 1st July 1973 or before the expiry of one year from the date of creation of the trust or institution, whichever is later. In case an application is made after expiry of the aforesaid period, the delay may be condoned by Chief Commissioner or Commissioner on reasonable grounds and in that case the exemption will be available from the date of creation of the trust or institution . In case the delay is not condoned, the exemption is available only from the first day of the financial year in which the application is made. If registration is not granted by the concerned authority, the benefit of exemption is not admissible. The Board, in their circulars of August 1984 and January 1987, had emphasised the need for the assessing officers to ascertain, through examination of accounts or annual reports of the past years, that the trust continued to spend its income on its stated objectives and had not diverted its income for non-charitable purposes. The Board had also advised that the renewal of registration of a dormant trust or one acting as a fund collecting agency would not be justified.

Test check revealed that 9 assessees (Gujarat, Kerala, Madhya Pradesh, Orissa, Uttar Pradesh charges) were either not registered with the Income tax Department or their applications for registration were pending with it, or they were granted registration from a date later than that applied for. In four of these case, there was no evidence available on record regarding the grant of registration to them. In one case, the registration was granted from a later date, one application was pending and in 3 cases, registration was not granted. Yet their assessments were completed treating them as registered charitable or religious trusts. The irregular exemption of trusts resulted in under assessment of income of Rs. 71.77 lakhs with tax effect of Rs. 42.20 lakhs in 14 assessments, (10 of which were completed under the summary assessment scheme, involving under assessment of income of Rs. 47.45 lakhs with tax effect of Rs. 26.98 lakhs) over the assessment years 1988-89 to 1991-92. The department accepted the audit observations in two cases.

Some illustrative cases are given below:

(i) In Gujarat Charge, a charitable trust which was created on 22nd March 1981 with the object, among other things, of providing medical relief, construction and maintenance of hospital etc., claimed complete exemption of its income as a hospital or medical institution for the assessment year 1989-90. This claim was rejected by the assessing officer on the ground that the assessee trust itself did not run a hospital or medical institution. However, exemption was granted to the assessee under Section 11 as a charitable trust and the assessment was finalised accordingly in a scrutiny manner, in July 1990 (rectified in January 1991). Though the trust was created on 22nd March 1981 it applied for registration only on 17th October 1990 after a lapse of more than 8 years and the registration was granted by the Commissioner of Income Tax effective from the date of filing of application for registration i.e., 17th October 1990. The assessee trust was, thus, not eligible for exemption of its income for the assessment year 1989-90. The incorrect grant of exemption resulted in under-assessment of income of Rs. 14.24 lakhs and non-levy of tax of Rs. 10.16 lakhs including interest for default in payment of advance tax. Wealth tax payable by this trust worked out to Rs. 1.31 lakhs on its net wealth of Rs. 65.95 lakhs for the assessment year 1989-90.

The audit observations were not accepted by the department stating that the Commissioner of Income Tax has condoned the delay of more than 8 years in filing the application, which was factually not correct.

(ii) In Orissa charge, a trust was created under the Societies Registration Act, 1860 on 30th December 1986 with the following objects:

(a) To initiate young people to development work.

(b) To conduct leadership courses for school youth or college students in order to make them understand their role in the society.

(c) To revitalise and promote co-operative work etc.

(d) To provide training in development work etc.

The society had applied for registration under the Income Tax Act on 23rd February, 1988. It had not been granted registration up to April 1992. During the period ending 31st December, 1987 and 31st March, 1989 relevant to the assessment years 1988-89 and 1989-90 the total receipts of the institution amounted to Rs. 1.51 lakhs and Rs. 25.58 lakhs respectively. The trust did not file the income tax return for the assessment year 1988-89 and no notice was issued calling for the return and consequently no asessment was made for that year, notwithstanding the fact that the trust had exercised an option to set part Rs. 1.04 lakhs for accumulation and future utilistion. The assessment for the assessment year 1989-90 was completed as scrutiny assessment on 19th February, 1990 computing the total income as nil and allowing the trust to accumulate Rs. 6.06 lakhs for future utilisation. Since the trust was not granted registration as a charitable trust, exemption of income from tax was not in order. Non-asessment of income of Rs. 7.10 lakhs for the assessment years 1988-89 and 1989-90 resulted in non-levy of tax of Rs. 3.73 lakhs in the aggregate.

Non fulfilment of condition for accumulation of income

2.02.12 Under the provisions of Income Tax Act, income derived from property held under trust wholly for charitable or religious purposes is exempt from levy of tax to the extent such income is applied for such purposes during the year together with any income not exceeding twenty five per cent of its total income, accumulated or set part from such purposes. However, a trust is permitted to accumulate more than twenty five per cent of its income, provided notice given in writing to the assessing officer before the expiry of time allowed for furnishing the return of income in the prescribed manner specifying the purpose for which income is being accumulated and the period (which in no case should exceed ten years) for which the same is being accumulated and the money so set apart is invested or deposited in the prescribed modes such as Central or State Government securities, scheduled bank deposits etc.

If the aforesaid accumulated income is not applied for the specified purpose within the prescribed period or ceases to remain invested in the prescribed modes, then such income is deemed to be the income of the trust or institution in the previous year in which the default occurs or in the previous year immediately following the expiry of the aforesaid period.

In the case of 66 trusts (Andhra Pradesh, Delhi, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab and Uttar Pradesh charges), the prescribed procedure for the accumulation of more than twenty five per cent of the total income for prescribed periods and for specified purposes was not followed, or the accumulated income was not utilised for specified purposes within the permitted time limit. The omission to tax the assessable income of Rs. 354.21 lakhs in 78 assessments ranging over assessment years 1989-90 to 1991-92 led to under-charge of tax of Rs. 191.98 lakhs (38 assessments of these were completed in a summary manner involving under-assessment of income of Rs. 242.82 lakhs with tax effect of Rs 154.01 lakhs). The department accepted the objection in four cases.

Irregularities in the investment of trust funds

2.02.13 The Income Tax Act stipulates that if any funds of a charitable or religious trust are invested or deposited after 28th February, 1983 in any mode other than those specified or if funds invested before 1st March, 1983 in the non specified manner continue to be so invested or deposited after 30th November, 1983, no exemption would be available to the trust and tax becomes leviable on its income at the maximum marginal rates. The specified modes are: Government savings certificates, deposit in post office saving banks, deposits with any scheduled bank or cooperative bank, investments in Central or State Government securities or units of the Unit Trust of India or in debentures guranteed by the Central of State Government, deposit with any public sector company, Industrial Development Bank or investment in immovable property etc.

In the case of nine assessee trusts, (Gujarat, Madhya Pradesh, Maharashtra, Punjab and West Bengal Charges) trust funds were invested in non-prescribed modes of investments resulting in under assessment of income of Rs, 52.57 lakhs with tax effect of Rs. 37.76 lakhs and non levy of wealth tax of Rs. 5.48 lakhs in 15 assessment 14 of which were done in a summary manner involving under assessment of income of Rs. 52.29 lakhs with tax effect of Rs. 37.65 lakhs) over the assessment years ranging from 1989-90 to 1991-92. The department has accepted the audit observations in seven cases.

An illustrative example is given below:

In the case of a trust assessed in Gujarat charge, it was revealed from audit reports of the Chartered Accountants on the accounts of the previous year, relevant to assessment year 1989-90 and 1990-91, that the trust had some investments otherwise than in the prescribed forms and modes. Further, trust funds were used contrary to the scheme and rules framed thereunder.

In view of these violations pointed out in the audit report, the trust was not eligible for exemption and its entire income was required to be brought to tax. Wealth tax was also leviable on the market value of its assets/property. Failure to do so resulted in under-assessment of total income of Rs. 37 lakhs and non-levy of income tax aggregating Rs. 23.43 lakhs. Wealth tax aggregating Rs. 5.48 lakhs was also leviable on the net wealth of Rs, 217.74 lakhs for the two years.

Business income not brought to tax

2.02.14 Exemption from levy of tax in respect of income by way of profits and gains of business of a trust is available with effect from assessment year 1984-85, only if the work is mainly carried on by the beneficiaries of the trust/institution wholly for charitable purposes or the business consists of printing and publication of books or is a kind notified by the Central Government which is carried on by a trust wholly for public religious purposes. In both cases the trust or institution is required to maintain separate books of accounts in respect of such business.

In the case of 4 assessee trusts, (Gujarat and Punjab Charges), assessed income by way of profits and gains of business undertakings was not brought to tax, though the business did not consist of the permitted kind or was not being carried on by the beneficiaries of the trust. Separate books of accounts were also not being maintained in these cases. The omission to bring to tax the business income in 8 assessments for the assessment years 1984-85 to 1990-91 completed under scrutiny, led to under under-assessment of income by Rs. 31.58 lakhs with tax effect of Rs. 17.40 lakhs.

An illustrative Case is given below:

In Punjab charge, a trust created for advancement of language and culture of the State, was registered as a charitable trust in November 1979. It was observed that during the previous years relevant to assessment years 1984-85 and 1986-87, the trust had business income of Rs. 8.78 lakhs and Rs. 4.04 lakhs respectively from publications and sale of newspapers. Against this income, the amount applied for charitable purposes was only Rs, 11,153 and Rs. 9,655 respectively in two years. Thus, the predominant object of the activity of the trust was profit earning, and its business income of ~~Rs.~~—12.82 lakhs in the two years was liable to tax of Rs. 7.95 lakhs. The assessee had also invested its funds in the business instead of specified investments.

Income escaping assessment

2.02.15 Under the provisions of the Income Tax Act, income from property held under trust wholly for religious or charitable purposes has to be computed on accrual/due basis. Accordingly, interest accrued on investment and capital gain not utilised for acquiring new capital asset are to be included in the total income of the assesses. Further, the Act provides that where any sum is found credited in the books of accounts or any investment made is not shown therein and if the assessee offers no explanation about the nature and source of such credit or investment, such an amount will be deemed to be the income of the assesee.

In the case of 5 assessee trusts (Delhi, Gujarat, Punjab and Tamil Nadu Charges), the exclusion of accrued interest of investments, capital gain on sale of capital assets not utilised for acquiring new capital assets and unexplained credit/investment in the books of accounts amounting to Rs. 26.79 lakhs results in under-charge of tax of Rs. 24.94 lakhs in 10 assessments completed ina scrutiny manner over the assessment years 1981-82 to 1990-91.

Incorrect exclusion from total income

2.20.16 The income of a trust or institution may be absolutely exempt from the levy of income tax under the provision of Income Tax Act, if it is established for charitable purposes and is notified by the Central Government having regard to its objects and importance or if it is established wholly for public religious purposes or wholly for religious and chartiable purposes and is notified by the Central Govt., having regard to the manner in which its funds are administered to ensure the proper application thereof its declared objectives. Also exempted is the income of a hospital or other institution for the reception, treatment, convalescence or rehabilitation of persons requiring medical attention and which are existing solely for philanthropic purposes and not for purposes of profit.

In Tamil Nadu charge, a public charitable trust formed with the main object of providing medical relief to the poor and needy in and around a metropolitan city had sponsored a medical institution for the treatment of cardio-vascular diseases. The institution provided treatment to both poor and rich patients and the number of poor patients who were provided treatment either free or at a concessional rate was on an average 10 per cent of the total number of the total number of patients treated in a year. During the previous years relevant to the assessment year 1988-89 and 1989-90, only 19 and 143 poor patients were treated. The cost of treatment given to the poor patients during the previous year relevant to 1989-90 was reported to be Rs. 19.15 lakhs as against the total collection of Rs. 342.43 lakhs vide the statement accompanying the annual reports and accounts of the trust. The hospital provided four grades of accommodation *i.e.* ordinary, semi-private, deluxe and super deluxe to patients in the hospital charging different rates. The charges for treatment including surgery, medicines and other services also varied with reference to the class of accommodation availed by the patients. Till the assessment year 1987-88, the assessments were completed after allowing exemption of its income under section 11 and 12. For the assessment years 1988-89 and 1989-90, the entire income of the trust was treated as exempt under section 10(22A) and the assessments completed accordingly.

Section 10(22A) provides for exemption of any income of a hospital/ medical institution established solely for philanthropic purposes and not for purposes of profit. 'Philanthropic' activities imply those related to affection for mankind. Since the assessee had been collecting fined charges at different rates according to an approved printed tariff for schedule service rendered, it cannot be considered as a hospital established solely for philanthropic purposes. On the other hand, the institution was run on a commercial basis collelcting heavy charges from the patients like any other private nursing home. As such, the income of the assessee trust could not be excluded under section 10 (22A). Further, as the conditions regarding application and accumulation of its income as laid down under section 11(1) (a) and 11(2) were not satisfied and in the absence of a report of audit of its accounts are required under section 12A(b), the income of the trust could not also be exempted under section 11 and 12. Tax due on the income of the assessee after making necessary adjustments of expenditure on depreciation and difference in foreign exchange rate, works out to Rs. 57:96 lakhs, for the assessment years 1988-89 and 1989-90.

2.02.17 (i) Other mistakes in computation of trust income

(a) Deduction on account of depreciation is not allowable in the computation of trust income, except in the case of business undertakings held under trust for public charitable or religious purposes. This is so, because where the trust does not carry out any business, the benefit of depreciation also cannot be allowed, treating it as actual application of trust income. In the case of 8 assessee trusts (Delhi, M.P., Rajasthan and U.P. charges), depreciation was allowed. This, together with non-filing of audit certificate and non application of 75 per cent of its income in one case (Madhya Pradesh charge), resulted under assessment of income of Rs. 103.95 lakhs with short levy of tax of Rs. 54.34 lakhs in 17 assessments over the assessment years 1981-82 to 1991-92 (of these 5 were completed under summary assessment scheme involving under-assessment of income of Rs. 88.98 lakhs with tax effect of Rs. 45.43 lakhs). Objections were accepted in 7 Cases.

(b) The incorrect adoption of income of Rs. 24.23 lakhs as Rs. (−)7.93 lakhs in one case assessed summarily for the assessment year 1990-91 in Bombay charge and non-consideration of income of Rs. 67.39 lakhs (out of which Rs. 21.94 lakhs was offered by the assessee itself and the remaining Rs. 45.44 lakhs for infringement of condition of investment in prescribed modes) in another case assessed under scrutiny for the assessment year 1989-90, in West Bengal charge, resulted in short lev of tax of Rs. 69.04 lakhs in aggregate.

(ii) Non-filing/late filing of Income tax Return

The Act provides that every person in receipt of income derived from property held under trust wholly for charitable or religious purposes shall furnish a return of such income, if the total income, without giving effect to the provisions of Sections 11 and 12, exceeds the maximum of the amount which is not chargeable to income tax.

It was noticed in audit that in 3 cases assessable in Kerala and Karnataka charges involving 13 assessment years, there was evidence available with the department that the trusts had assessable income, and yet they were either not furnishing their returns or their income had not been correctly assessed. The department did not take any action to call for the returns/revised return. In the absence of any such returns, it would not be ensured that the trusts had been correctly assessed to tax. In case of non-filing and late filing of returns, the Act provides for levy of penalty also.

In Karnataka charge, a society established in 1980 with the only object of forming residential layouts for the benefit of its members from the Defence and Government establishments was registered by the Commissioner of Income Tax in 1980 as a public charitable trust. The income of the Society was treated as exempt from tax up to the assessment year 1987-88 on the ground that it was registered as a public charitable trust. In February 1991, the Commissioner or Income tax, observed that the society was not engaged in any charitable activities. This has further been established by assessing officer while concluding the assessment for the assessment year 1988-89. Even so, steps were not taken to reopen the assessments of the earlier years where the income was treated as exempt nor were the Wealth tax returns called for. This resulted in non-levy of tax aggregating Rs. 3.86 lākhs in the assessment years 1985-86 to 1987-88.

(iii) Failure to file audit report

One of the conditions for claiming exemption from the levy of tax under Income Tax Act and Wealth Tax Act is that where the total income of the trust or institution exceeds twenty five thousand rupees in any year, the accounts for that year are audited by a Chartered Accountant and the report of the accountant in the prescribed form No. 10B, duly signed and verified by him and setting forth the prescribed particulars, is furnished alongwith the return of income. In the absence of audit reports, the income of the trust is taxable at the rate applicable to association of persons.

In the case of 36 assessees (A.P, Bihar, Delhi, Gujarat, Karnataka, Madhya Pradesh, Rajasthan and West Bengal charges), test check revealed that the audit reports of the chartered accountant, in the prescribed form, were not filed alongwith the returns of income for different assessment years ranging from 1989-90 to 1991-92 in 60 cases. Nevertheless, exemption was granted, resulting in under-assessment of income of Rs. 464.81 lakhs with non-levy of tax of Rs. 269.55 lakhs. (41 of these were completed under summary assessment scheme involving under assessment of income of Rs. 325.81 lakhs with tax effect of Rs. 193 lakhs).

(iv) Non-maintenance of Register of accumulation of income by trusts and utilisation thereof.

With a view to ensuring that the assessing officer maintains a check on the fulfilment of the provisions of the Act, the Central Board of Direct Taxes has prescribed (April 1984) the maintenance of 'Register of accumulation of income by the trusts and utilisation thereof'. The register was, however, not maintained in any of the wards test checked in Punjab, Delhi and the Union Territory of Chandigarh.

Gift Escaping Assessment

2.02.18 Under the Gift Tax Act, 1958, donations made by any person to any charitable institution or fund which is not exempted under the provisions of the Income Tax Act, are liable to gift tax.

In Tamil Nadu charge, a trust received from a political party, a sum of Rs. 4 lakhs towards its corpus during the previous year relevant to assessment year 1985-86, the assessment of which was completed in March 1988 under scrutiny. Audit scrutiny of the relevant income tax records of the trust revealed that the sum was utilised by the trust for setting off earlier years' losses and for replacement of loans in connection with the printing press and not for any charitable purpose. The contributions were not exempted under the provisions of the Income Tax Act. In the above circumstances the sum of Rs. 4 lakhs should have been treated as gift and charged to gift tax in the hands of the donor. The omission to do so resulted in the escapement of gift of Rs. 4 lakhs leading to a non-levy of gift tax of Rs. 80,250 for assessment year 1985-86. The assessing officer of the trust has intimated the Income Tax Officer assessing the donor about this escapement who in turn has issued notice to the donor calling for the return of gift (March 1990).

Wealth of trust escaping assessment

2.02.19 Property held under trust or other legal obligation for any public purpose of charitable or religious nature in India is exempt from levy of wealth tax. The exemption is, however, not available if the trust forfeits exemption under the Income Tax Act *inter alia* for the following reasons:

(i) Any part of income or property of the trust has been applied for the benefit of the author, or the manager of the trust, any trustee or any of their specified relatives.

(ii) Trust funds have been invested in modes not prescribed under the provisions of the Act.

In such cases, wealth tax is chargeable at the maximum marginal rate without excluding the value of any asset exempted under Wealth Tax Act.

In the case of 62 assessee (Andhra Pradesh, Delhi, Gujarat, Karnataka, Mahrashtra, Punjab, Tamil Nadu and West Bengal charges), it was noticed that exemption of income from the property held under trust for income tax purposes was not available for income tax purpose for one or more of the reasons stated above and as such the properties in question constituted the wealth of the assessees, eligible to wealth tax. Except in the case of 20 assesses, no return of wealth had been filed nor was any notice calling for the wealth tax return issued by the department. In the cases in which wealth tax returns were filed, erroneous deduction on account of exemption of certain assets was noticed with consequent non-levy of tax at the maximum marginal rates. The mistakes resulted in non-levy of wealth tax amounting to Rs. 102.14 lakhs in 188 assessments (20 of which were completed in a summary manner) completed for assessment years ranging from 1981-82 to 1991-92. In the case of 18 assessees, the department had agreed to take action while in 43 others, final replies have not been received. The one case in which the department did not accept the objection is as under:

In Gujarat Charge, an assessee trust was exclusively engaged in the business of construction of residential flats and letting the same out on rent to the members of a particular community. The income received from renting the properties had been assessed to income tax, but no action was taken to bring the market value of the assets relating to assessment years 1981-82 to 1990-91 to wealth tax. This resulted in non-levy of wealth tax of Rs. 30.32 lakhs and penalty of Rs. 25.30 lakhs for non filing of returns of wealth. The Department did not accept the objection stating that it was not correct to hold that the trust was not a charitable trust since the blocks were rented to the poor members of a particular community. However, since no exemption was allowed under the Income Tax Act for income from these properties, these were liable to wealth tax also.

APPENDIX II

Conclusions/Recommendations

Sl. No.	Para No.	Min. Deptt. Concerned	Conclusions/Recommendations
1	2	3	4
1	95	Min. of Finance (Deptt. of Revenue)	The State has always recognised and sought to encourage the laudable role of private philanthrophy in relieving distress and in helping to meet the socio-economic, cultural and religious needs of the society. Such an encouragement has been a feature of the Indian taxation system. Sections 11 to 13 of the Income Tax Act, 1961 deal with exemptions available to income of trusts and institutions created for charitable or religious purposes, subject to fulfilment of certain conditions. Wealth tax is also not charged on property held under trust or other legal obligations for public purposes of a religious and charitable nature. Donors are given relief from income tax and gift tax in respect of donation paid to institution established in India for charitable purposes. The Committee have during the examination of the Audit Review noticed a number of inadequacies in the system as well as deficiencies in the existing law and its applicability which have been brought out in the succeeding paragraphs.
2	96	Min. of Finance (Deptt. of Revenue)	The Income of an institution, trust or fund created for charitable or religious purposes can be exempted under Section 10(23)(c) (iv) and (v) or Section 11 of the Income Tax Act. Although some of the conditions for grant of tax exemption under both these sections are common, yet, under the provisions sub section 4-A of Section 139, the filing of returns by assessees under

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			section 11 has been made mandatory if the total income without taking into account the provisions of this section is taxable. At the same time, in the case of assessees exempted under Section 10(23)(c) (iv) and (v) filing of returns has not been made necessary as the income does not form part of the total income. According to the Ministry of Finance (Department of Revenue), the reasons for granting exemption to religious and charitable trusts under two different sections of Income Tax Act are to do away with the requirement of filing of an annual return and to impose any time limit for accumulation of funds in the case of those trusts which are of national and statewise importance. In this context, the Public Accounts Committee in their 144th Report (1982-83, 7th Lok Sabha) had expressed the view that grant of exemption under Section 10(23)(c) (iv) and (v) freed the grantee institutions from all legislative, judicial and administrative control of Income Tax Law. The Committee had, therefore, recommended that this section should be scrapped altogether from the statute book. According to Ministry of Finance, on the recommendations of the Economic and Administrative Reforms Committee (Jha Committee) to whom the matter was referred and on the basis of recommendations of PAC, Clause (iv) and (v) of Section 23 were amended by the Direct Tax Laws (Amendment Act, 1989) with effect from 1st April, 1990 to provide for conditional notifications issued by the Central Government under which a trust or institution is granted exemption for maximum period of the assessment years.
3	97	Min. of Finance (Deptt. of Revenue)	While the Committee note that in pursuance of their earlier recommendation, an amendment has been made in the Act according to which a conditional notification is now issued to keep a further check on the misuse of the utilisation of funds by trusts, they are still not fully satisfied with the efficacy of the present

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			system. In view of the very fact that at the time of grant of renewal of such trusts, total reliance is placed on the information supplied by the respective trusts in the prescribed form and no detailed scrutiny is exercised, the Committee feel that it may not be possible for the assessing authorities to ensure whether all the conditionalities of law have been fulfilled or whether the renewal at all is justified. The Committee, therefore, desire that the Ministry of Finance should re-examine the desirability of retaining both the sections simultaneously in the Act in order to ensure effective monitoring of the cases. The Committee would like to be apprised of the final outcome of such a review together with the decision taken in this regard.
4	98	Min. of Finance (Deptt. of Revenue)	The Income Tax Act provides a separate exemption under Section 10(23-A) for specified income of an association or institution established in India for encouragement of the profession of law, medicine, engineering and accountancy etc. The Committee have found during the course of their examination that inspite of having a specific provision for such professional bodies, Government have been allowing general exemptions under Section 10(23)(c) (iv) to such bodies with the result that certain additional exemption by way of income from house properties, dividends and interest etc. is also granted to these institutions/associations. According to the Ministry of Finance, there is no prohibition in granting exemption under Section 10(23)(c) (iv) to the professional bodies which are covered by Section 10(23A) so long as these bodies fulfil conditions of Section 10(23)(c) (iv). The Ministry of Law had earlier opined that the provisions of Section 10(23-A) would prevail over that of Section 10(23)(c) (iv) however, in their latest opinion the Ministry have observed that the mere fact that an institution is governed by Section 10(23A) may not take away from it exemption afforded under section 10(23)(c) (iv).

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			The Committee have noticed that a lot of flexibility exists in law so far as the interpretation and applicability of provisions of Section 10(23A) and 10(23)(c) (iv) are concerned with regard to the exemptions which are being granted to professional institutions/associations. Whereas some professional bodies are covered under the provisions of section 10(23)(c) (iv) others continue to remain under Section 10(23A) resulting in total lack of uniformity. They are surprised to note divergent views expressed by the Ministry of Law on two different occasions with regard to the interpretation of these sections. The matter is reported to have been once again referred to the Ministry of Law for eliciting fresh opinion. Keeping in view the huge revenue implications the Committee desire that the whole issue should be reappraised and the opinion of the Attorney General should be solicited with at view to having an authoritative opinion in the matter. The Committee would like to be apprised about the final decision taken in this regard.
5	99	Min. of Finance (Deptt. of Revenue)	Every person on receipt of income derived from the property held under trust set up wholly for religious and charitable purposes is required to furnish a return of such income under Income Tax Act if the total income, without giving effect to the provisions of Section 11 and 12 exceeds the maximum of the amount which is not chargeable to income tax. The Committee, however, note that Section 10(22) of the Income Tax Act allows exemption to any income of a University or other educational institutions existing solely for educational purposes and not for the purposes of profit. Similarly under Section 10(22A) any income of a hospital or other institution is exempted if it has been established for the reception, treatment, convalescence or rehabilitation of persons requiring medical attention and which is existing solely for philanthropic purposes and not for

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			profit. There is however no requirement under the law for the institutions referred to in Section 10(22) and 10(22A) to file returns voluntarily resulting thereby in the possibility of evasion of tax by a large number of such institutions. The case of Madras Medical Mission cited in the Review conducted by Audit is only one small case. According to the Ministry of Finance's own admission, there are a very large number of hospitals, trusts, convalescence homes and organisations offering medical treatment which *prima facie* enjoy benefits of Section 10(22A). Besides, though under some existing provisions in the Income Tax Act, action can be taken against such institutions/organisations but in Committee's view, in the absence of statutory requirement for filing of income tax returns, the identification of the organistations which choose not to file the returns leaves a big question mark. The representative of the Board was candid in admitting that the only area where they are not in a positon to systematically evaluate the performance of the trusts is the educational institutions and hospitals under Section 10(22) and 10(22A). The Secretary, Revenue also conceded that in view of the large number of institutions coming forward for exemptions, the matter did require a second look. The Committee are of the firm view that taking into account the very fact that there are a large number of institutions/hospitals/organisations which often seek exemption under the provisions of Section 10(22) and 10(22A), there is an urgent need to ensure that the income that they earn is used strictly in accordance with the objectives for which these have been set up. Under no circumstances they should be allowed to enjoy the benefits of exemption, in case they are working purely on commercial lines with the main motive of making profits. This in the view of the Committee can only be ensured if the income earned by such institutions passes through the strict scrutiny of the Income Tax

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			Department. They therefore, desire the Ministry of Finance to seriously consider bringing the institutions mentioned under Section 10(22) and 10(22A) under the scrutiny and control of the department as is exercised in the case of those covered under the provisions of Section 11 of the Income Tax Act.
6	100	Min. of Finance (Deptt. of Revenue)	From the statistical information furnished to the Committee they are also surprised to note that in some of the charges the number of returns filed by the trusts were more than the actual number of trusts registered. CBDT was also not able to explain the reasons for such variations. There was also no system to check if the defunct trusts ~~which~~ had assessable income chose not to file the income tax returns. In some of the cases test checked by Audit it was revealed that some of the trusts did not file the returns even though they had assessable income. It was also found that even unregistered trusts were filing their returns and yet enjoying exemptions under the provisions of Act. Also no comprehensive list was being maintained of all those institutions which enjoy exemptions under Section 10(22) and 10(22A). The Committee fail to understand as to how in the absence of the complete information available regarding the functioning of both registered and unregistered trusts, CBDT was able to assess the income of trusts correctly. They are of the considered view that this is an area which requires urgent attention. They also desire that some foolproof system needs to be evolved to ensure that all the trusts which have assessable income file their returns regularly and defaulting trusts are suitably penalised under the different provisions already existing in Act.
7	101	Min. of Finance (Deptt. of Revenue	The Committee find that assessment of trusts done earlier as scrutiny cases under Section 143(3) of Income Tax Act have been brought under the purview of summary assessment scheme w.e.f. April 1988. Bulk of assessments of religious and charitable trusts are now completed

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			in a summary manner without independently applying the statutory conditions prescribed under Section 11 to 13 of the Income Tax Act. Under the specific provisions of Section 143(1) *prima facie* allowance or disallowance can be made just on the basis of information available in the return or accompanying documents. No reference to past record is permissible to make such adjustments. According to the Ministry of Finance, the changeover to new system was necessitated due to increasing volume of work, manpower constraints and to pay more attention to bigger cases of trusts. Besides all trusts having income of more than Rs. 50,000 before giving effect to the provisions of Section 11 and 12 are also required to file audited Report in Form 10-13. This coupled with detailed information contained in various columns of Form 3A acts as sufficient safeguards to prevent abuse of concessions and to ensure that all conditions have been fulfilled by charitable trusts for being given benefits under Section 11 even where assessments are completed in a summary manner under Section 143(1) (a). Besides, specific guidelines have been formulated for selection of trust cases for compulsory scrutiny apart from 5% of the cases which are randomly taken up for scrutiny. Instructions have also been issued by Chairman, CBDT in 1989 which have again been reiterated by the Board in 1991 to the effect that the returns should expeditiously and invariably be linked with assessment records after they are processed under Section 143(1) (a) of the Income Tax Act.
8	102	Min. of Finance (Deptt. of Revenue)	The Committee however are not convinced with the justification advanced by the Ministry of Finance for switching over to the new system. In their view, the new procedure of assessments under which all the returns are initially processed under Section 143(1) (a) of the Income Tax Act for *prima facie* adjustments if any merely on the basis of returns/accompanying documents and

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			only a very small percentage of cases are selected for detailed scrutiny cannot be as effective as the earlier procedure under which under Section 143(3) all the cases had to pass through strict scrutiny assessments. Besides, keeping in view the very fact that cases processed under Section 143(1) (a) are also opened very sparingly for scrutiny, the possibility of evading the tax liabilities by a large number of trusts cannot be ruled out. The Committee also take a serious note of the fact that only 5% of the cases are selected on random basis for compulsory scrutiny and the guidelines for compulsory scrutiny under some sections relating to trusts have also been issued only recently. Having taken into account the very fact that large revenue effects in assessment of religious and charitable trusts are involved, the Committee desire that not only the guidelines issued by Department in this regard should be followed scrupulously but the percentage of the cases of which are selected on random basis should also be suitably augmented so as to circumvent, the trusts from evading to pay their legitimate dues to the Government. They are also of the opinion that in order to ensure that tax concessions are not abused it is but necessary that information contained in the records which are filed before the assessing authorities are necessarily verified with reference to the past records. The Committee desire that not only instructions issued by the Board in this regard need to be followed in letter and spirit but review should also be undertaken in order to assess whether such instructions are also being followed by the assessing officers while deciding cases under Section 143(1) (a). The Committee would like to be apprised of the outcome of such a review.
9	103	Min. of Finance (Deptt. of Revenue)	Donations specifically made towards the corpus of the trusts created for charitable and relgious purposes are not included in the total income of the trust for levying tax. Donor is also exempted

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			from tax payment. The inherent intention in granting such exemption is that the amount received towards donation to carpus funds should be utilised for charitable and religious purposes. However, the Committee note that under the Act, no time limit has been prescribed for utilization of such funds with the result that though both donors and donees trust enjoy tax exemptions, there is a possibility that the donated fund may not be spent on avowed objectives and remain unutilized indefinitely. Besides in the event of a trust subsequently becoming defunct the amount would escape tax liabilities. As an illustration, Audit in their review have brought out the case of a trust in UP charge which was created on 31st March, 1978 with an initial donation of Rs. 45,000 with the object of constructing a hospital to give free medical relief to the general public, however, despite the fact that the trust continued to receive contributions, the hospital was not completed till the end of the previous year relevant to the assessment of year 1983-84. The entire balance of Rs. 82,670 as on 31.3.83 was lying unspent. While defining the defunct trusts as those which are set up with a particular objective but are not able to garner donations to carry on with their objectives, the representative of Board informed that on the request being made by a trust a maximum period of 10 years is granted to such trusts to accumulate their income. The Commitee however, note that there is no mechanism which exists in the department to inspect the functioning of trust at every stage with a view to ensuring that the income earned is utilized strictly in accordance with the objectives foi which these trusts are established. It is only during the process of searches and surveys conducted by intelligence agencies that the cases of defaulting trusts come to their notice and taxes are levied. The Committee are of the view that a period of 10 years for allowing accumulation of income from Corpus by these trusts is on the

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			higher side and the desirability of reducing this period further needs to be considered, so that during the scrutiny of assessments, all those trusts which fail to utilize the income from the corpus funds towards the avowed objectives could be brought within the purview of tax liabilities. Besides some suitable mechanism should also be evolved to bring such voluntary donations within the ambit of taxation which are received off the record in the form of jewellery or cash etc. and for which no account is maintained. The Committee are of the view that since the trusts stand to benefit by such donations, these should not be allowed to easily get away from the penalties.
10	104	Min. of Finance (Deptt. of Revenue)	Under Section 12 of the Income Tax Act, any voluntary contribution received by a Trust created wholly for charitable or religious purposes shall be deemed to be income derived from the property held by the Trust if such contribution has not been made with a specific direction that the same shall form the corpus of the Trust. Donations towards earmarked funds such as building fund, scholarship fund etc. cannot be taken to be made towards the corpus fund but are merely to be treated as appropriation of income for a specific purpose and are therefore, to be included in the total income. The Committees examination, however, revealed a number of cases in different charges where the exclusion from total income of donations to earmarked funds or voluntary contributions/grants without specific direction of the donors to treat them as corpus funds resulted in non assessment of income amounting to a substantial amount. Out of 15 cases of assessee trusts pointed out by Audit in which such irregularities had been committed, the Ministry of Finance accepted four cases involving a revenue effect to the tune of Rs. 2.47 lakhs in three cases alone. In one case, relating to Assam, the correct amount of tax revenue could not be

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			ascertained since the reassessment proceedings were reported to be in progress. Though the remedial action in the other three cases was reported to have been initiated by reopening the assessments the Committee are not happy over the tardy progress made in finalisation of such cases. They also deplore the callous attitude of the assessing authorities which resulted in such wrong assessments and the consequential loss of revenue. The Committee would expect the officers to be more careful and vigilant in future and also desire that the pending action in respect of all the cases should be completed expeditiously and the total tax effect involved in all the cases should also be intimated to the Committee.
11	105	Min. of Finance (Deptt. of Revenue)	With a view to preventing abuse in the application and investment of trust funds there are stringent provisions in the Income Tax Act under which entire income of the trust becomes liable to tax if a part or whole of the income or property is directly or indirectly applied or used for the benefit of a certain category of persons such as author/founder of the trust/institution, any trustee or manager or substantial contributors, or any specified relative of the aforementioned persons. The benefit is also not available if the benefit is restricted to any particular religious community or caste or the employee or member of a trust/institution or a substantial donor. Test check conducted by Audit of assessment records for the assessment years 1981-82 to 1990-91 alone revealed cases of 11 such assessees, trusts, whose properties were used for the benefit of prohibited category of persons or their relatives or were restricted to a particular religious community or caste. This resulted in non-assessment of income of Rs. 70.11 lakhs together with revenue loss to the tune of Rs. 34.11 lakhs. Out of these, the Ministry of Finance accepted only four cases involving a total tax effect of Rs. 21.15 lakhs. Whereas remedial

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			action in respect of 2 cases was reported to have been completed, reassessment proceedings under section 147 in other two cases was reported to have been initiated. The Committee however take a serious note of the fact that despite stringent provisions existing in the law, exemptions have illegally been granted to the trusts which in turn has resulted in causing substantial revenue loss to the Government. What further irks the Committee is the very fact that no effort has been made by CBDT to maintain chargewise information of such illegal exemptions which have been granted during the past several years. The Committee, therefore do not understand as to how in the absence of such a vital information, monitoring and correct assessment of income tax involved in a large number of assessments is possible. What further dismay the Committee is the fact that even remedial action is also not taken promptly by the department in such cases which in itself reflects poorly on the working of the officials of the department. They are not at all happy over the slow progress made so far in disposal of pending cases and desire that earnest efforts must be made to expeditiously completed not only the reassessment proceedings which are reported to be pending but also those cases where action under section 147 has been initiated.
12	106	Min. of Finance (Deptt. of Revenue	One of the conditions for seeking exemption of income of trusts is that a trust or the institution is required to get itself registered under Section 12A of the Income Tax Act, 1961 before the expiry of a period of one year from the date of creation of the trust/institution. However, by Finance (No.2) Act, 1991, this condition has further been relaxed and the application can now be made even after the expiry of a period of one year. The delay can be condoned by the Chief Commissioner or Commissioner of Income Tax, provided he is satisfied for such delay on reasonable grounds. In such cases, the exemption will be available from the date of creation of the

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		trust or institution. In case the delay is not condoned the exemption is available from the first day of the financial year in which the application is made. Test check conducted by audit revealed that in the case of nine assessees, the assessments were completed and exemptions in income tax had been allowed even when trusts had either not been registered with the Income Tax Department or their applications for registration were pending or they were granted exemption from a date later than that applied for. Such irregular exemption granted to trusts resulted in underassessment of income of Rs. 71.77 lakhs with tax effect of Rs. 42.20 lakhs. As an illustrative case audit pointed out the case of a trust in Gujarat, where the trust was created on 22 March, 1981 but it applied for registration only on 17 October, 1990 i.e. after a lapse of more than eight years. Yet the registration was granted by the Commissioner of Income Tax w.e.f. the date of filing of application. Thus the assessee trust which was not eligible for exemption of income for the assessment year 1989-90 was granted incorrect exemption resulting into non levy of tax amounting to Rs. 10.16 lakhs. Out of 12 cases reported by the audit, the Ministry accepted irregularities in six cases and out of these in the one case it was revealed that the registration was granted even after a period of three years.
107	Min. of Finance (Deptt. of Revenue)	The Committee take a serious note of the fact that incorrect grant of exemption granted in the past to the religious and charitable trusts has resulted in under assessment of income and non levy of tax involving huge amounts. They find that when under Section 12A it is a pre-requisite that a trust must get itself regisered before filing the claim of exemption, some of the trusts have been granted exemption even when these had either not come forward for registration at all or their applications for the same were pending. They also note that under

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			the Income Tax Act there is no time prescribed under which the grant of registration is to be accorded by the Chief Commissioner/ Commissioner of Income Tax as a result of which the applications remain pending for years together. They are not convinced with the defence advanced by the Ministry of Finance in this regard, under which the delay in disposal of application is stated to be on account of incomplete application, time taken for verification of supporting documents, modifications to be carried out in trust deeds and work pressure in the office of the Commissioner of Income Tax. The way exemptions have been granted in the past by the Department without ascertaining the legal status of the trusts make the Committee feel that there is certainly something amiss in the working of the department which drastically needs to steamlined. Therefore, they also desire that application seeking registration for trusts must be disposed of expeditiously. They are no reason as to why legal provisions to this effect cannot be incorporated in the Act itself specifying time limit for disposal of such applications when a period already stands prescribed in the Act for making the application for registration by the trusts. They, further desire that a serious thought needs to be given by CBDT in this regard. All cases where exemptions have been granted wrongly/illegally need to be probed further with a view to fixing responsibility. The committee would also like to be intimated in this regard.
14	108	Min. of Finance (Deptt. of Revenue)	Under Section 11(1)(a) of the Income Tax Act, income derived from property held under trust wholly for charitable or religious purposes is exempt from tax liabilities to the extent such income is applied for the objective of the trust during the year or accumulated and set apart for such purposes so long as it does not exceed 25% of its income. If a trust is unable to apply 75% of its income during the year and

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			wishes to accumulate more than 25% of its income for future utilisation and seeks tax exemption for the current year, the trust has to file Form 10 in which it has to state the purpose and the period of accumulation (which in no cae should exceed 10 years). The money so set apart is required to be invested in prescribed modes such as Central and State Government Securities, Scheduled Bank deposits etc. In case, the money so accumulated is not applied for the specified purpose within the prescribed period or ceases to remain invested in prescribed modes, then such income is deemed to be the income of the trust or institution in the previous year in which the default occurs or the year immediately a following the expiry of the prescribed period. The Committee find from the test review conducted by Audit that in the case of 66 Trusts, either prescribed procedure for the accumulation of more than 25% of the total income for prescribed period and purposes was not followed or the accumulated income was not utilised for the purposes specified within the prescribed time limit. This resulted in under charge of tax amounting to Rs. 191.98 lakhs in 1978 assessments. The Ministry of Finance accepted the mistakes for having allotted accumulations under Section 11(2) in eight cases involving a total amount Rs. 10.06 lakhs and the remedial action was reported to have been taken. The Committee were also informed that in respect of other cases where the Audit objections had not been accepted, the remedial action was being taken as a precautionary measure. The Committee, however, note that no penalty had been provided under the Act in case trusts violated the above mentioned provisions except to tax the trusts in the year in which default occurs. According to the Ministry of Finance this itself was considered to be an adequate compensation for breach of conditions. The Committee are however of the considered view that this could not be considered as a sufficient

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			deterrent and stringent measure to check such malpractices. They desire that suitable provisions therefore, be incorporated in the Act so that offenders are not able to evade the payment of tax easily. They desire the Ministry of Finance to examine the incorporation of such a provision and apprise the Committee in this regard in due course of time.
15	109	Min. of Finance (Deptt. of Revenue)	Under the provisions specified in Section 11(5) of the Income Tax Act the incomes sought to be accumulated have to be invested or deposited by the religious or charitable trusts in the prescribed modes and the tax becomes leviable at the maximum marginal rates in case such funds are invested or deposited in any mode other than those specified. Under the Act the specified modes are Government Saving Certificates, deposit in Post Office, saving banks, deposits with any scheduled/Cooperative Bank, investments in Central or State Government Securities, units of UTI, debentures guaranteed by the Central/State Government, deposit with any public sector company, Industrial Development Bank etc. Audit has brought out in the review cases of nine such assessee trusts where illegal exemptions were granted in clear violation of these stipulated provisions under the Income Tax Act. This resulted in under assessment of total income amounting to Rs. 52.57 lakhs and non levy of income tax of Rs. 37.76 lakhs. In the case of a trust assessed in Gujarat charge alone the income was not assessed despite the fact that the trust was not eligible for exemption which consequently resulted in non levy of income tax aggregating to Rs. 23.43 lakhs and wealth tax of Rs. 5.48 lakhs. Likewise, exemption from the levy of tax in respect of income by way of profits and gains of business of a trust is available w.e.f. assessment year 1984-85 (and prior to April 1, 1992) only if the work is carried on by the beneficiaries of the

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			trust/institution wholly for charitable purposes or if the business consists of printing and publication of books or a kind notified by the Central Government which is carried on by a trust wholly for public religious purposes. In both the cases the trust or institution is required to maintain separate books of accounts for such business. According to Audit in the case of four assessee trusts, the assessed income by way of profits and gains was not brought to tax, despite the fact that the business was not of permitted kind and was not being carried on by the beneficiaries of the trusts. Separate books of accounts were also not being maintained in such cases. The omission to bring to tax, the business income in eight assessments for the assessment years 1984-85 to 1990-91 lead to under assessment of income of Rs. 31.58 lakhs with tax effect of Rs. 17.40 lakhs. Though the Committee have not gone into the details of the cases mentioned above they desire that remedial action in all cases mentioned above should be taken up immediately and all necessary steps should also be taken to ensure that such mistakes do not occur in future.
16	110	Min. of Finance (Deptt. of Revenue)	Under the Gift Tax Act, 1958 donation made by any person to any charitable institution or fund which is not exempted under the provisions of Income Tax Act are liable to gift tax. Audit in their review have pointed out a case in Tamil Nadu charge where a sum of Rs. 4 lakhs was received by a Trust towards its corpus during the previous years relevant to the assessment year 1985-86. This contribution, however, was not used for any charitable purposes but against setting off losses of the earlier years. The contributions were, therefore, not exempted under the provisions of Income Tax Act and the amount should have been treated as gift and charged to Gift Tax. The omission to do so resulted in non-levying of Gift Tax of Rs. 80,250/-

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			for the assessment year 1985-86. According to the Ministry of Finance, in the instant case since the assessee had filed an appeal before the Income Tax Appellate Tribunal the amount was still outstanding. Action by the Department against the concerned Officer who had completed the assessment also was not taken since he had retired and the mistake had been considered to be bonafide. The Committee however, take a serious view of such blatant mistakes which are committed by the assessing officers while granting tax exemption without scrupulously following the provisions stipulated in the Act and without exercising a detailed scrutiny of the cases. They are also anguished to note the way such officers are allowed to escape their responsibilities under the defensive cover of their seniors. They are of the firm opinion that no law can be effective if it is not implemented earnestly. The Committee, therefore, desire that as and when such cases of illegal and irregular exemptions come to the notice of the Department, suitable punitive action should invariable be taken expeditiously against the officers so as to inculcate a sense of responsibility and discipline among all and to save consequential loss to the exchequer.
17	111	Min. of Finance (Deptt. of Revenue)	Property held under trust or other legal obligations for any charitable or religious purposes for the benefit of general public is also exempted from levy of wealth tax. However, no exemption is available under Wealth Tax Act if the trust forfeits exemption under Income Tax Act for any infringement of its provisions. Audit in their test checks conducted have pointed out cases of 62 assessees under different charges where exemption of income from properties of trusts was not available and the properties in question should have been taxed for wealth tax. However, surprisingly in most of the cases as brought out by audit neither any return of wealth tax had been filed nor any notice was issued by

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			the department for filing such return. Besides even in cases in which wealth tax returns were filed erreoneous deductions on account of exemption of certain assets was noticed with consequential non levy of tax at the maximum marginal rates. Such mistakes according to the Audit Review resulted in non levy of wealth tax amounting to Rs. 102.14 lakhs in 188 assessments completed for the assessment years ranging from 1981-82 to 1991-92. The Ministry of Finance accepted irregularities only in five cases, and remedial action in other cases was reported to have been initiated as a precautionary measure. The Committee cannot but express their serious concern over the irregularities which have been committed. Though they have been informed that instructions have been issued from time to time for effecting proper correlation between the income tax, wealth tax and gift tax records relating to the assessees and coordination between the assessing officers, the Committee are not satisfied with the results achieved in view of the fact that there have been a number of instances of wrong assessments. The Committee desire that earnest efforts should be made to ensure that instructions are followed scrupulously. A periodical review should also be undertaken by the department in order to ensure that there is no laxity in so far as the implementation of the instructions are concerned. They also desire that action in respect of the cases which are under review should be completed expeditiously.
18	112	Min. of Finance (Deptt. of Revenue)	The Committee's examination of the cases where the exemption have been allowed to religious and charitable trusts reveals that various concessions are allowed to trusts in recognition to the contributions made by them towards social objectives. Surprisingly, no effort has been made to monitor whether the trusts have been fulfilling the objectives under which they have been established and also for ensuring that there is

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			no abuse of the concessions which are enjoyed by such trusts. The Committee also note that the Ministry have been asking their Directorate of Special Investigation and Directorate of Management Services to go into certain aspects of the working of these institutions very occasionally. The representatives of the Board also conceded during evidence that though evaluation has been done by examining trusts in a random manner, but no proper systematic evaluation study has been undertaken during the last ten years. However, they accepted the fact that there was a need to undertake such a study. In the absence of existence of any effective system evolved for scrutinising the functioning of a large number of trusts the Committee are not able to appreciate the rationale for allowing exemptions to these trusts, more so when the amount of revenue involved in such exemption is substantial and when the primary object behind grant of such exemption is to enlarge the contributions made by these trusts in supplementing the work of the welfare state by catering to the educational, medical, socio-economic and religious needs of the people in the country. In the light of the deficiencies/ shortcomings observed in the foregoing paragraphs, the Committee desire that the Ministry should seriously ponder and look into the whole issue afresh with a view to devising a procedure for proper and systematic evaluation of religious and charitable trusts so that those trusts which are not discharging their functions in consonance with the objectives under which they have been established do not escape any tax liability.